

## PART I - OVERVIEW

1. This case raises a fundamentally important question: whether the confidential records of child clients represented by the Office of the Children’s Lawyer (“OCL”) are subject to public access requests under the *Freedom of Information and Protection of Privacy Act* (“*FIPPA*” or the “*Act*”).
2. Justice for Children and Youth (“JFCY”) submits that subjecting a lawyer’s client files to public access requests, whether through *FIPPA* or any other mechanism, places the lawyer in the position of potentially being required to violate the lawyer’s ethical, professional, and fiduciary duties of confidentiality and loyalty. JFCY submits that children’s client files, created in the context of solicitor-client relationships, must be provided with the same types of protections as any solicitor-client files would be. This protection must be rigorously guarded by the courts, particularly when the clients in question are children whose legally recognized vulnerabilities entitle them to a heightened level of protection in the justice system.
3. The OCL takes the position that the confidential records of its child clients obtained in the context of solicitor-client relationships are not subject to access requests under *FIPPA*. As such the OCL has declined to make a decision on the *FIPPA* access request made by the Respondent John Doe. The Information and Privacy Commissioner of Ontario (“IPC”) takes the position that the OCL is a branch of the Ministry of the Attorney General (“MAG”), and that the client records of the OCL can be the subject of *FIPPA* access requests. Accordingly, the IPC takes the further position that the OCL, as a branch of MAG, must issue a decision on John Doe’s *FIPPA* access request.
4. If a decision is required under *FIPPA*, there are only two possible options: (1) deny access to the records, or (2) grant access to the records. Denying access is only permitted by *FIPPA* if the

records fit within the scope of an enumerated exemption in the *Act*. If the records do not fall within the scope of an enumerated exemption, access must be granted.

5. If a decision is required under *FIPPA*, the OCL may be forced to breach its fiduciary duties. While the records in question were obtained in the context of solicitor–client relationships, some of those records may not fit within the scope of *FIPPA*'s exemption for solicitor-client privilege. According to the *FIPPA* regime, if the records do not fit within the scope of an exemption in the *Act*, the records must be disclosed. While some of the records may not be subject to solicitor-client privilege, all records of a lawyer are subject to the lawyer's fiduciary obligations of confidentiality and loyalty. If a decision is required under *FIPPA*, and some of the records are non-privileged records, those records must be disclosed by the OCL yet disclosing those confidential client records would constitute a breach of the OCL's fiduciary duties of confidentiality and loyalty.
6. The fiduciary duties of confidentiality and loyalty are an essential aspect of the solicitor-client relationship. The solicitor-client relationship and the associated fiduciary duties are fundamentally important to the integrity of the administration of justice. Subjecting the OCL client records to *FIPPA* may place the OCL in the intolerable position of being statutorily obligated to breach its fiduciary duties. This amounts to a fundamental erosion of the solicitor-client relationship. Allowing such a fundamental erosion of the relationship between lawyers and their child clients will not only disadvantage children in the justice system, but will have a seriously detrimental impact on the integrity of the administration of justice as a whole.

## **PART II - THE FACTS**

7. JFCY accepts the facts and procedural history as presented by the parties. Where there is any contradiction in the parties' recitation of the facts, JFCY takes no position on the correct version that should be accepted by this Honourable Court.

8. JFCY, a legal clinic funded by Legal Aid Ontario with a mission of advancing the rights, interests and dignity of children and youth, was granted the right to intervene in this case based on its expertise regarding the representation of child clients, the privacy rights of children, and the application of child rights legal principles, including those found in the *Charter* and the United Nations *Convention on the Rights of the Child* (“*UNCRC*”).

*Affidavit of Cheryl Milne*, originally filed with JFCY’s Motion for Leave to Intervene, JFCY’s Book of Authorities (“BOA”) Tab 1.

### **PART III – LAW AND ARGUMENT**

#### **Preliminary Issue – The 2003 *Children’s Lawyer* Case**

9. This case presents a fundamentally important question of law: are OCL client records subject to the *FIPPA* regime? JFCY submits that they are not. As a starting point, JFCY wishes to highlight one of the comments made by this Honourable Court in the 2003 case of *Children’s Lawyer*, *infra*. That case is cited by each of the parties in the present case and was relied on by the IPC decision-maker and the Divisional Court in the decisions below. In *Children’s Lawyer* the OCL had acted for a child client. When the child became an adult, she asked the OCL for a copy of her records. Oddly, the OCL treated the request as a *FIPPA* access request rather than a request from a client for her records. At the time this Honourable Court questioned why the request was diverted to the *FIPPA* regime, but none of the parties sought to argue the point:

The Children's Lawyer...treated this as a request for information under *FIPPA* rather than as a request from a client for her file. However reasonable it might be to analyze the interests at stake in this framework, this was not raised as an issue before us, and I will say nothing more about it.

*Children's Lawyer for Ontario v. Goodis*, [2005] O.J. No. 1426 [*Children’s Lawyer*] at para 5, BOA Tab 2.

10. In the present case JFCY submits that OCL client records are not subject to the *FIPPA* regime.

This point was not argued in *Children's Lawyer* and this Honourable Court was regrettably not provided with submissions on the point. However, it is worth noting that the Court's decision in that case focused primarily on the question of whether the Privacy Commissioner had standing in the appeal. That case does not expressly rule on the more fundamental question regarding whether OCL client records are subject to *FIPPA*. Indeed, as mentioned above, this Honourable Court clearly signalled that it was dubious about proceeding under the *FIPPA* regime. *Children's Lawyer* is also distinguishable from the present case in that the request in that case was made by the OCL client herself, not by a stranger to the solicitor-client relationship. Alternatively, JFCY submits that *Children's Lawyer* is wrongly decided insofar as it characterizes OCL client records as being subject to the *FIPPA* regime. In that event, the case at bar presents an opportunity for this Honourable Court to revisit this fundamental question.

### **Overview of JFCY's Submissions**

11. In answering the fundamental question in this case, JFCY relies on the following overarching submissions:
  - A. Children are individual rights holders entitled to form fully protected solicitor-client relationships independent of adult involvement;
  - B. Children's inherent vulnerabilities entitle them to a heightened level of protection in the justice system;
  - C. Solicitor-client privilege does not cover all client records in the possession of a lawyer, but all client records in the possession of a lawyer (both privileged and non-privileged) are covered by a lawyer's professional, ethical, and fiduciary duties of confidentiality and loyalty; and

D. Intrusion into the fiduciary duties of lawyers amounts to a fundamental erosion of the solicitor-client relationship, which in turn undermines the integrity of the administration of justice as a whole.

12. Each of these submissions is discussed in turn below.

**A. Children are individual rights holders entitled to form fully protected solicitor-client relationships independent of adult involvement**

13. JFCY submits that the underlying order of the IPC in the present case (Order PO-3520 or the “Initial IPC Decision”) incorrectly states the law as it relates to children’s right to obtain and instruct legal counsel. JFCY submits that, regardless of the outcome in this appeal, the IPC’s incorrect assessment of the law should be corrected; otherwise future reliance by courts, tribunals or lawyers on the Initial IPC Decision may result in serious harm to the ability of children to meaningfully exercise their right to legal representation.

*IPC Order PO-3520, Appeal PA14-84 [Initial IPC Decision] at paras 70-72, BOA Tab 3.*

14. Children of all ages are recognized across provincial, federal, and international law as individual rights holders capable of exercising their rights independently. Examples can be found throughout a range of Ontario statutes and in the common law.<sup>1</sup>

15. Many statutes explicitly grant children the right to obtain and instruct legal counsel. Section 38(1) of the *Child and Family Services Act* states that a child may have legal representation at any stage of a proceeding under that part of the statute. Section 25(1) of the *Youth Criminal Justice Act*

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<sup>1</sup> See *Summary of Age-Based Legal Milestones for Youth in Ontario, JFCY’s BOA at Tab 4*, which contains many examples including the following: seven-year olds have the right to refuse adoption; twelve-year olds in the child welfare context have the right to apply on their own to vary or terminate supervision orders or society wardship orders; twelve-year olds also have the right to veto any voluntary care agreements between a parent and a children’s aid society; twelve year olds are subject to criminal law sanction, and entitled to instruct defence counsel; sixteen-year olds can apply for a Canadian passport without parental involvement; unaccompanied minors are able to initiate immigration and refugee law claims, and children are entitled to make citizenship applications; a child of any age can consent to or refuse health care treatment if the child is capable of understanding the nature and consequences of the treatment; and a child of 16 can make an advance health care directive. The common law also grants other rights to children, including the right of 16-year olds to unilaterally terminate the custody of a parent (also known as withdrawing from parental control); and the right to enter into binding contracts for necessities.

states that young people have the right “to retain and instruct counsel without delay, and to exercise that right personally...” A child who is subject to a secure treatment program is entitled to legal representation pursuant to s.81(3) of the *Health Care Consent Act*. These examples of statutory entitlements to legal representation are supported by the common law, which does not limit the right to legal representation based solely on age.

16. Relationships between child clients and lawyers are protected by the same professional, ethical, and fiduciary obligations lawyers owe to all of their clients. Among these obligations are the duties of confidentiality and loyalty, which are discussed in more detail below. Additionally, as Abella J., as she then was, found in *NAW, infra*, “the role of the lawyer for the child is no different from the role of the lawyer for any other party; he or she is there to represent a client by protecting the client’s interests and carrying out the client’s instructions.”

*Children's Aid Society of Metropolitan Toronto v. S.D.*, [1993] O.J. No. 1148 at paras 9, 26, BOA Tab 5.  
*NAW (Re)*, 1979 CanLII 773 (ONCJ) at para 5, BOA Tab 6.

17. While some specific statutes require children in particular contexts to be provided with a litigation guardian in order to participate in the litigation, there is no blanket requirement for every child in every litigation context to have a litigation guardian. Rule 7.01(1) of the *Rules of Civil Procedure* expressly recognizes that in civil litigation either statute or a court can dispense with the need for a child to have a litigation guardian in those contexts. None of the examples of statutes explicitly granting legal representation to children listed above requires the child to have a litigation guardian, and in particular the *YCJA* expressly states that the right to counsel is a right exercised personally by the young person. While the OCL is typically the body that provides lawyers for children in the family law and child welfare contexts, children may also be represented in those contexts by lawyers not associated with the OCL. By way of example, lawyers at JFCY provide direct legal representation to children and youth involved in many areas of law, including family

law and child welfare litigation.

*Rules of Civil Procedure*, Rule 7.01(1).

*Children's Aid Society of Metropolitan Toronto v. S.D.*, *supra*, at para 9, BOA Tab 5.

*Family Law Rules*, Rule 4(7).

*Affidavit of Cheryl Milne*, originally filed with JFCY's Motion for Leave to Intervene, at paras 8-10, BOA Tab 1.

18. Despite the widely accepted and understood reality that children may independently retain and instruct counsel, the Initial IPC Decision in the present case incorrectly states at paragraph 70 that “children cannot represent themselves or retain counsel without a litigation guardian, as they are under the legal disability of childhood.” This bald assertion is patently false. The statement is not qualified in any way that would suggest the statement is directed at or limited to particular contexts. It is an unqualified statement that, presumably, is intended to apply broadly to all litigation involving children. Without significant qualification, the statement does not accurately state the law as it relates to legal representation for children.

19. Additionally troubling, the only authority provided for the statement is the OCL's own submissions in a previous case, *Children's Lawyer*, *supra*. In that case the OCL's submissions on this point were rejected by the Divisional Court on appeal, and the OCL was ultimately unsuccessful. Indeed the Divisional Court's decision in that case includes a detailed 25-paragraph analysis that highlights the importance of the independent relationship between child clients and their lawyers, and affirms that child clients are entitled to benefit from the same fiduciary obligations owed by lawyers to adult clients. The Initial IPC Decision's reliance on the OCL's submissions in that case is misguided at best.

*Children's Lawyer for Ontario v Goodis*, 2003 OJ No 3522 at paras 83-102, BOA Tab 7.

20. JFCY submits that not only was the adjudicator in the Initial IPC Decision misguided in its reliance on the OCL's previously rejected submissions, but there was in fact no basis in law for the broad statement purportedly affirming a significant limit on children's rights to counsel.

Moreover, JFCY submits that, regardless of the outcome in the present appeal, this Honourable Court should expressly reject that statement and should instead affirm the longstanding state of the law: that children have an independent right to retain and instruct counsel without a litigation guardian and are entitled to benefit from the same professional, ethical and fiduciary obligations owed by lawyers to their adult clients.

**B. Children’s inherent vulnerabilities entitle them to a heightened level of protection in the justice system**

21. Child clients are entitled to all the same benefits of solicitor-client relationships as adult clients. Courts must rigorously protect that these benefits and all of the concurrent children’s rights. The inherent vulnerabilities of children in society include vulnerability to the erosion of their legal rights and protections through either failure to recognize children as individual rights holders or indifference to their ability to meaningfully exercise their rights. This lack of recognition of and indifference to legal rights does not exist in the same way for adults, even adults in similar legal contexts. In light of this, courts must jealously guard the solicitor-client relationships of child clients, and should make the vulnerabilities of children a mandatory factor to be considered in the context of a possible intrusion into the solicitor-client relationships of child clients.
  
22. International, foreign, and Canadian legal traditions recognize the inherent vulnerability of children occasioned by their evolving capacities, lack of sophistication and maturity, and dependence on adults. The United Nations *Convention on the Rights of the Child* (“*UNCRC*”) – to which Canada is a signatory, and which is expressly incorporated into various domestic statutes – requires that “special safeguards and care, including legal protection” be afforded to young people.

United Nations, *Convention on the Rights of the Child*, Can. T.S. 1992 No. 3., Preamble, Article 40, clauses 1 and 2(b)(vii), BOA Tab 8.

UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Article 25, BOA Tab 9.

23. The Supreme Court has also made it clear that children are inherently vulnerable and deserving of heightened levels of protection in the justice system:

Recognition of the inherent vulnerability of children has consistent and deep roots in Canadian law. This results in protection for young people's privacy under the *Criminal Code* ... the *Youth Criminal Justice Act* ... and child welfare legislation, not to mention international protections such as the *Convention on the Rights of the Child*, ... all based on age, not the sensitivity of the particular child... The law attributes the heightened vulnerability based on chronology, not temperament...

*AB (Litigation Guardian of) v Bragg Communications Inc.*, 2012 SCC 46, at para 17, BOA Tab 10.

24. One of the ways the law provides children with added protection is to guarantee legal representation for children in certain situations. Sections 38 and 114(6) of the *Child and Family Services Act* guarantee legal representation for a child when it is desirable to protect the child's interests or when an application is brought to commit a child to secure treatment. Section 81(3) of the *Health Care Consent Act* guarantees legal representation for a child in a secure treatment placement if the child is involved in a Consent and Capacity Board proceeding. Section 25(4) of the *Youth Criminal Justice Act* allows a youth court judge to direct that a young person be represented by counsel if the young person is not able to independently retain counsel.
25. Another way the law provides added protection for children involved in the justice system is by protecting their privacy interests. Perhaps the most comprehensive codification of privacy provisions related to young people is found in Part 6 of the *Youth Criminal Justice Act*, which governs records, publication, and information related to young people involved in the criminal justice system. Similarly, in the child welfare system, section 45(4) of the *Child and Family Services Act* requires hearings to be held in the absence of the public and section 45(8) of that act states that no child may be identified publicly as being a participant in a child welfare proceeding.
26. The enhanced protections provided to children and young people in the broad variety of

circumstances described above illustrates the point that children as a group receive a heightened level of protection in the justice system. While child clients are entitled to benefit from the same fiduciary obligations lawyers owe to their adult clients, child clients' solicitor-client relationships must be viewed within the context of their recognized vulnerabilities. As the court stated in *SSB, infra*, "A child-client's right to a confidential relationship with counsel must be guarded with more vigilance than that accorded to an adult client, not with less." [Emphasis added]

*Catholic Children's Aid Society of Toronto v SSB*, 2013 ONSC 4560 at para 32, BOA Tab 11.

**C. Solicitor-client privilege does not cover all records in the possession of a lawyer, but all client records and information (both privileged and non-privileged) are covered by a lawyer's duties of confidentiality and loyalty**

27. The scope of solicitor-client privilege is narrower than that of both the fiduciary duty of confidentiality and the lawyer's professional obligation to keep client information confidential. In common parlance it may be that privilege and confidentiality are used interchangeably, but the legal grounding and resulting scope of information and records protected by each is quite different. The oft-cited case of *Solosky, infra*, sets out the test for when solicitor-client privilege will apply: (i) a communication between solicitor and client; (ii) which entails the seeking or giving of legal advice; and (iii) which is intended to be confidential by the parties.

*Solosky v R.*, [1980] 1 SCR 821 [*Solosky*] at para 28, BOA Tab 12.

28. The protection provided by solicitor-client privilege does not extend to every record in the possession of a lawyer. Even documents derived from legal advice or used in the preparation of legal advice are not necessarily covered by privilege.

*Maranda c. Québec (Juge de la Cour du Québec)*, 2003 SCC 67 at para 42, BOA Tab 13.

*Canada (Information Commissioner) v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 CAF 104, 2013 FCA 104 at paras 24-33, BOA Tab 14.

*College of Physicians & Surgeons (British Columbia) v British Columbia (Information & Privacy Commissioner)*, 2002 BCCA 665 at paras 51, 67, BOA Tab 15.

29. While not all records in the possession of a lawyer are covered by solicitor-client privilege, all records and information in the possession of a lawyer are subject to the lawyer's professional obligations to protect the client's confidentiality and are protected by the lawyer's fiduciary duties of confidentiality and loyalty. Rule 3.3-1 of the Law Society's *Rules of Professional Conduct* states that "all information concerning the business and affairs of the client acquired in the course of the professional relationship" [emphasis added] shall be held in "strict confidence." The commentary provided by the Law Society on this rule also notes that this professional obligation is wider than the scope of solicitor-client privilege.

*Rules of Professional Conduct*, Rule 3.3-1 Commentary at para 2, BOA Tab 16.

30. The common law fiduciary duties of confidentiality and loyalty are also broader in scope than solicitor-client privilege. The duty of confidentiality prohibits a lawyer from disclosing the client's confidential information, privileged or not. The duty of loyalty, as a principle of fundamental justice, goes even further: a lawyer in possession of information may not act on that information in a way that is contrary to the client's interests even if the information is no longer confidential. The duty of loyalty requires the lawyer to avoid any action that places the interests of another above the interests of the client.

*R. v. Neil*, 2002 SCC 70 at paras 16-19, BOA Tab 17.

*Canada (Attorney General) v Federation of Law Societies of Canada*, 2015 SCC 7 [*Federation*] at para 94, 102-103, BOA Tab 18.

31. The analysis above militates against an interpretation of *FIPPA* that subjects OCL records to the *FIPPA* regime. Such an interpretation would create a statutory obligation on the OCL to breach its fiduciary obligations. Rather, JFCY submits that *FIPPA* must be interpreted in a manner that is consistent with the common law fiduciary duties of lawyers in solicitor-client relationships. That is to say that where the OCL represents children, the resulting client files should not be subject to public access requests.

**D. Intrusion into the fiduciary duties of lawyers amounts to a fundamental erosion of the solicitor-client relationship, which in turn undermines the integrity of the administration of justice as a whole**

32. The Supreme Court in *Federation, supra*, recognized the duty of loyalty as a principle of fundamental justice, noting “when the state's imposition of duties on lawyers undermines... the lawyer's ability to comply with his or her duty of commitment to the client's cause... there will be a departure from what is required by this principle of fundamental justice.” Stated simply, the state is not permitted to undermine the lawyer’s duty of loyalty. The Supreme Court in *MacDonald Estate, infra*, stated “nothing is more important to the preservation of [the solicitor-client] relationship than the confidentiality of information passing between a solicitor and his or her client”

*Federation, supra*, at para 111, BOA Tab 18.

*MacDonald Estate v Martin*, [1990] 3 S.C.R. 1235 at para 18, BOA Tab 19.

33. The Supreme Court in *Strother, infra*, stated that the solicitor-client relationship is “overlaid with certain fiduciary responsibilities” designed to “protect the integrity of the administration of justice.” In *MacDonald Estate, supra*, the Court stated that “Loss of this confidence [in the solicitor-client relationship] would deliver a serious blow to the integrity of the profession and to the public's confidence in the administration of justice.” The Supreme Court in *Neil, infra*, noted that fiduciary duties are “essential to the integrity of the administration of justice and it is of high public importance that public confidence in that integrity be maintained...”

*3464920 Canada Inc. v. Strother*, 2007 SCC 24 at para 34, BOA Tab 20.

*MacDonald Estate, supra*, at para 18, BOA Tab 19.

*R v Neil, supra*, at para 12 (internal citations omitted), BOA Tab 17.

34. The court went on in *Neil, supra*, finding that “undivided loyalty of the lawyer” is of utmost importance in the context of a legal system “which may appear to [the client] to be a hostile and hideously complicated environment...” These sentiments arose in the context of adult litigants, and

JFCY submits that they deserve even more weight when considering the inherent vulnerabilities of child litigants engaged in that same hostile and complicated legal system.

*R v Neil, supra*, at para 12 (internal citations omitted), BOA Tab 17.

35. The importance of the fiduciary duties to the solicitor-client relationship demonstrates that subjecting OCL client records to *FIPPA*, and in so doing placing the OCL into a position where it may have to breach its fiduciary duties, amounts to a fundamental erosion of the solicitor-client relationship. Furthermore, endorsing an erosion of the solicitor-client relationship in this way would do serious harm to the integrity of the administration of justice and the public's confidence in the system as a whole.
36. In addition to the damage to the solicitor-client relationship and the corresponding blow to the integrity of the administration of justice, subjecting OCL client records to the *FIPPA* regime would also result in a series of absurd and problematic practical outcomes, including:
  - i.) Pursuant to section 66(c) of *FIPPA*, where a child represented by the OCL is less than 16 years of age, the parent of that child would be entitled to exercise power over the OCL records despite the fact that the parent may be an opposing party to the child;
  - ii.) Pursuant to subsections (e) and (g) of *FIPPA*'s definition of "personal information", where the OCL has a record of something a child said to a third party about a parent, such as a disclosure by the child to a therapist or counsellor, the record of that disclosure becomes the "personal information" of the parent, and the parent is then entitled to access that information from the OCL regardless of whether such access would violate the doctor-patient confidentiality of the child;

- iii.) Any member of the public, with or without prior relationship with the child, could request information about a child represented by the OCL, and depending on the nature of the information the OCL may be obligated to disclose the information;
- iv.) Even though the OCL is the statutorily created body entrusted with representing children in certain contexts, children represented by the OCL would be provided with a lower level of privacy protection than children represented by non-OCL lawyers; this is true even for children within the same litigation such as where the OCL represents one child in a case and a non-OCL lawyer represents another child in the same case;

37. Subjecting OCL client records to *FIPPA* is contrary to the spirit and purpose of *FIPPA*. Section 1 of the *Act* states that the purposes of the *Act* include providing access to “government information” and “protect[ing] the privacy of individuals with respect to personal information about themselves”. Subjecting OCL client records to the *FIPPA* regime does not accomplish either of these goals, and in fact compromises the protection of individuals’ privacy in a fundamental way. OCL client records do not contain information that can be purposively described as “government information”, nor do they contain any information to which the general public would expect to have access in accordance with the principles of government accountability and transparency.

### **Conclusion**

38. The statutory framework created by *FIPPA* should not apply to the OCL’s confidential client records. When the core principles of solicitor-client relationships are understood correctly, it becomes evident that subjecting OCL client records to *FIPPA* access requests has the effect of forcing the OCL to breach its fiduciary obligations, undermining the solicitor-client relationship,

and doing serious damage to the integrity of the justice system as a whole, all while exposing inherently vulnerable children to even fewer privacy protections than adults or children represented by non-OCL lawyers in the same system. OCL client records should not be subject to the *FIPPA* regime.

#### **PART IV – ORDER SOUGHT**

39. JFCY does not seek any particular order. JFCY submits that the outcome in this case should recognize the fundamental importance of the solicitor-client relationship to the integrity of the administration of justice, and should emphasize the inherent vulnerabilities of child clients that promote a heightened level of protection in the justice system. JFCY also requests that this Honourable Court explicitly reject the incorrect summary regarding the nature of relationships between lawyers and child clients that formed part of the Initial IPC Decision, and instead this Honourable Court should affirm the law that children are individual rights holders entitled to independent legal representation by lawyers who are bound by the same duties of confidentiality and loyalty that are owed to adult clients.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 21<sup>st</sup> DAY OF NOVEMBER, 2017.

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**SCHEDULE A:  
LIST OF AUTHORITIES**

1. *Affidavit of Cheryl Milne*, originally filed with JFCY’s Motion for Leave to Intervene
2. *Children's Lawyer for Ontario v. Goodis*, [2005] O.J. No. 1426
3. *IPC Order PO-3520, Appeal PA14-84*
4. *Summary of Age-Based Legal Milestones for Youth in Ontario*
5. *Children's Aid Society of Metropolitan Toronto v. S.D.*, [1993] O.J. No. 1148
6. *NAW (Re)*, 1979 CanLII 773 (ONCJ)
7. *Children’s Lawyer for Ontario v Goodis*, 2003 OJ No 3522
8. United Nations, *Convention on the Rights of the Child*, Can. T.S. 1992 No. 3
9. UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III)
10. *AB (Litigation Guardian of) v Bragg Communications Inc.*, 2012 SCC 46
11. *Catholic Children’s Aid Society of Toronto v SSB*, 2013 ONSC 4560
12. *Solosky v R.*, [1980] 1 SCR 821
13. *Maranda c. Québec (Juge de la Cour du Québec)*, 2003 SCC 67
14. *Canada (Information Commissioner) v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2013 CAF 104, 2013 FCA 104
15. *College of Physicians & Surgeons (British Columbia) v British Columbia (Information & Privacy Commissioner)*, 2002 BCCA 665
16. *Rules of Professional Conduct*, Rule 3.3-1 Commentary
17. *R. v. Neil*, 2002 SCC 70
18. *Canada (Attorney General) v Federation of Law Societies of Canada*, 2015 SCC 7

19. *MacDonald Estate v Martin*, [1990] 3 S.C.R. 1235

20. 3464920 *Canada Inc. v. Strother*, 2007 SCC 24

**SCHEDULE B:  
RELEVANT PROVISIONS OF STATUTES, REGULATIONS, AND BY-LAWS**

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**CHILD AND FAMILY SERVICES ACT, R.S.O. 1990, CHAPTER C.11**

**Legal representation of child**

38 (1) A child may have legal representation at any stage in a proceeding under this Part. R.S.O. 1990, c. C.11, s. 38 (1).

**Hearings private unless court orders otherwise**

45 (4) A hearing shall be held in the absence of the public, subject to subsection (5), unless the court, after considering,

(a) the wishes and interests of the parties; and

(b) whether the presence of the public would cause emotional harm to a child who is a witness at or a participant in the hearing or is the subject of the proceeding,

orders that the hearing be held in public. R.S.O. 1990, c. C.11, s. 45 (4); 2009, c. 33, Sched. 7, s. 1 (2).

**Prohibition: identifying child**

45 (8) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding, or the child's parent or foster parent or a member of the child's family. R.S.O. 1990, c. C.11, s. 45 (8).

**Legal representation of child**

114 (6) Where an application is made under subsection (1) in respect of a child who does not have legal representation, the court shall, as soon as practicable and in any event before the hearing of the application, direct that legal representation be provided for the child. R.S.O. 1990, c. C.11, s. 114.

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**COURTS OF JUSTICE ACT, ONTARIO REGULATION 114/99, FAMILY LAW RULES**

**Lawyer for Child**

4 (7) In a case that involves a child who is not a party, the court may authorize a lawyer to represent the child, and then the child has the rights of a party, unless the court orders otherwise. O. Reg. 114/99, r. 4 (7).

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**COURTS OF JUSTICE ACT, R.R.O. 1990, REGULATION 194, RULES OF CIVIL PROCEDURE**

**Party under Disability**

7.01 (1) Unless the court orders or a statute provides otherwise, a proceeding shall be commenced, continued or defended on behalf of a party under disability by a litigation guardian. O. Reg. 69/95, s. 2.

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**HEALTH CARE CONSENT ACT, 1996, S.O. 1996, CHAPTER 2 , SCHEDULE A**

**Child in secure treatment program**

(3) If a child who has been admitted to a secure treatment program under section 124 of the Child and Family Services Act is a party to a proceeding before the Board, the Children’s Lawyer shall provide legal representation for the child unless the Children’s Lawyer is satisfied that another person will provide legal representation for the child. 1996, c. 2, Sched. A, s. 81 (3).

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**FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT, R.S.O. 1990, CHAPTER F.31**

**Definitions**

2 (1) In this Act,

[...]

“personal information” means recorded information about an identifiable individual, including,

[...]

(e) the personal opinions or views of the individual except where they relate to another individual,

[...]

(g) the views or opinions of another individual about the individual, and

[...]

**Exercise of rights of deceased, etc., persons**

66 Any right or power conferred on an individual by this Act may be exercised,

(a) where the individual is deceased, by the individual’s personal representative if exercise of the right or power relates to the administration of the individual’s estate;

(b) by the individual’s attorney under a continuing power of attorney, the individual’s attorney under a power of attorney for personal care, the individual’s guardian of the person, or the individual’s guardian of property; and

(c) where the individual is less than sixteen years of age, by a person who has lawful custody of the individual. R.S.O. 1990, c. F.31, s. 66; 1992, c. 32, s. 13; 1996, c. 2, s. 66.

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**YOUTH CRIMINAL JUSTICE ACT, S.C. 2002, C. 1**

**Right to counsel**

25 (1) A young person has the right to retain and instruct counsel without delay, and to exercise that right personally, at any stage of proceedings against the young person and before and during any consideration of whether, instead of starting or continuing judicial proceedings against the young person under this Act, to use an extrajudicial sanction to deal with the young person.

**Trial, hearing or review before youth justice court or review board**

25 (4) When a young person at trial or at a hearing or review referred to in subsection (3) wishes to obtain counsel but is unable to do so, the youth justice court before which the hearing, trial or review is held or the review board before which the review is held

(a) shall, if there is a legal aid program or an assistance program available in the province where the hearing, trial or review is held, refer the young person to that program for the appointment of counsel; or

(b) if no legal aid program or assistance program is available or the young person is unable to obtain counsel through the program, may, and on the request of the young person shall, direct that the young person be represented by counsel.