



**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION**

Citation: *JW v. Newfoundland and Labrador English School District*,
2025 NLSC 92

Date: June 13, 2025

Docket: 202301G3879

IN THE MATTER OF an Application by JW,
with and for his child IW to commence an
action in the Honourable Court.

IN THE MATTER OF an Intended Action
between JW, with and for his child IW, as
Plaintiff, and Newfoundland and Labrador
English School District, as the Proposed Defendant.

IN THE MATTER OF raising a Constitutional
Question by JW, with and for his child IW, under
Rule 8.01(3) of the *Rules of the Supreme Court, 1986*

Before: Justice Vikas Khaladkar

Place of Hearing: St. John's, Newfoundland and Labrador

Date of Hearing: May 12, 2025

Summary:

The Applicant sought a declaration that he be allowed to represent his child in an action to be brought against the Newfoundland and Labrador English School District. Rule 8.01(3) requires that persons under a disability be represented by legal counsel. It was held that Rule 8.01(3) constitutes valid

subordinate legislation authorized by the *Judicature Act* which, in turn, falls under the section 92(14) head under the *Constitution Act, 1867*. The Rule does not offend any provisions of the *Canadian Bill of Rights*, the *Charter* or the common law. The Application was dismissed.

Appearances:

JW	Appearing on his own behalf
Paul Dicks, K.C. and Megan S. Reynolds	Appearing on behalf of the Proposed Defendant

Authorities Cited:

CASES CONSIDERED: *Weidenfeld, Re* (2007), 162 C.R.R. (2d) 359, 162 A.C.W.S. (3d) 235 (Ont. Sup. Ct. J.); *Godbout v. Longueuil (Ville)*, [1997] 3 S.C.R. 844; *R. v. Oakes*, [1986] 1 S.C.R. 103; *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295; *New Brunswick (Minister of Health & Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46; *Daniel v. Insurance Corp. of British Columbia*, 2002 BCCA 715, *Finnegan (Guardian ad litem of) v. Gronow* (1998), 19 C.P.C. (4th) 173, 78 A.C.W.S. (3d) 248 (B.C. S.C.); *Sayhoun v. Ho*, 2011 BCSC 567; *Champagne v. Sidorsky*, 2012 ABQB 522; *Flewelling v. Scotia Island Property Ltd.*, 2009 NSSC 94

STATUTES CONSIDERED: *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.); *Canadian Bill of Rights*, S.C. 1960, c. 44; *Human Rights Act, 2010*, S.N.L. 2010, c. H-13.1; *Judicature Act*, R.S.N.L. 1990, c. J-4; *Statutes and Subordinate Legislation Act*, R.S.N.L. 1990, c. S-27; *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11; *Limitations Act*, S.N.L. 1995, c. L-16.1; *Children's Law Act*, R.S.N.L. 1990, c. C-13; *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11

RULES CONSIDERED: *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D; *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194

REASONS FOR JUDGMENT

KHALADKAR J.:

INTRODUCTION

[1] The Applicant, JW, intends to file an action against the Proposed Defendant in respect of allegations of battery for masking his child without consent and for the intentional infliction of mental suffering on himself and his wife as a result of the Proposed Defendant's alleged failure to provide an investigation report of the incident to JW and his spouse.

[2] The Applicant filed an Originating Application in August, 2023, since amended, on behalf of his child challenging the constitutional validity, applicability or operability of Rule 8.01(3) of the *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D. Rule 8.01(3) requires:

(1) A person under disability may not commence, defend, intervene or appear in any proceeding except by his or her guardian *ad litem*.

(2) Subject to the provisions of these rules, anything which in the ordinary conduct of any proceeding is required or authorized by a provision of these rules to be done by a party to the proceedings shall or may, if the party is a person under disability, be done by his or her guardian *ad litem*.

(3) A guardian *ad litem* of a person under disability shall act by a solicitor.

THE APPLICANT ARGUED

[3] The Applicant said that Rule 8.01(3) impugns the right of a parent to represent their child in legal proceedings – thereby nullifying a fundamental aspect of the parent-child relationship in cases where legal representation cannot be secured, where there are financial constraints and legal aid is not available.

[4] The Applicant said that Rule 8.01(3) creates an unfair barrier for parents wishing to represent their own children in civil matters.

[5] The Applicant submitted that Rule 5.07(1) of the *Rules of the Supreme Court, 1986*, supersedes Rule 8.01(3). Rule 5.07(1) provides that:

Any person, whether or not that person sues as a trustee or personal representative or in any other representative capacity, may commence, carry on or defend a proceeding in the Court by a solicitor or in person.

[6] The Applicant posed the following constitutional questions:

- a) Does the Province of Newfoundland and Labrador (the “Province”), have legislative competency to create laws that infringe, abrogate or abridge the natural rights, fundamental freedoms or civil liberties by virtue of section 92 of the *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.)?
- b) Does section 17 of the *Constitution Act, 1867* imbue Parliament with the exclusive legislative competency to affect natural rights, fundamental freedoms or civil liberties?
- c) If Parliament has exclusive legislative competence, does section 5(3) of the *Canadian Bill of Rights*, S.C. 1960, c. 44, apply to provincial laws?
- d) Does Rule 8.01(3) infringe or deny the natural rights or fundamental freedoms assured by the Constitution and guaranteed by sections 1(a), 1(b) and 2(e) of the *Canadian Bill of Rights*?
- e) If Rule 8.01(3) does infringe or deny the natural rights or fundamental freedoms secured by the Constitution and guaranteed by the *Canadian Bill of Rights* is the Rule unreasonable or *ultra vires* and, therefore, inconsistent with section 52 of the *Constitution Act, 1867*?

[7] The Attorneys General of Canada and the Province were served with Notices of the Constitutional Question. Both Attorneys General indicated that they did not wish to participate in this litigation.

[8] The Applicant argued that he, as a parent, and his son possess substantive, inherent and inalienable rights secured by the *Constitution Act, 1867*.

[9] The Applicant said that every Canadian has the constitutionally secured substantive right of the individual to equality before the law and the protection of the law by the rule of law and, additionally, the implied Bill of Rights contained in the preamble to the Constitution.

[10] The Applicant argued that the Province lacks the legislative competence to create laws that infringe, abrogate or abridge the natural rights and fundamental freedoms of individuals. The Applicant said that only Parliament has the legislative competence to affect these rights.

[11] The Applicant argued that the *Canadian Bill of Rights* and in particular section 5(3) of that statute, should be interpreted to apply to any and all laws that infringe upon, abridge or abrogate the natural rights and fundamental freedom of individuals.

[12] The Applicant argued that he and, through him, his son have the right to sue and be sued “in person” by virtue of Rule 5.07(1) of the *Rules of the Supreme Court, 1986*.

[13] The Applicant asserted that he obtains *jus tertii* standing on account of the special relationship between a parent and their child. He asserted that he has the right, as a parent, to bring actions on behalf of his dependent child.

[14] The Applicant sought to invoke section 9(1) of the *Human Rights Act, 2010*, S.N.L. 2010, c. H-13.1, which prescribes that all persons, adults and minor children, are to be treated equally and are not to be discriminated against on account of enumerated prohibited grounds.

[15] The Applicant argued that a province's *parens patriae* jurisdiction should only be invoked in circumstances where a child's parents cannot agree upon a course affecting the best interests of the child. However, where the parents are not in conflict then their rights to make decisions and judgments on their children's behalf should be respected.

[16] The Applicant sought declarations that:

- a. Rule 8.01(3) should be interpreted or amended to allow parents the right to represent their children in civil matters when legal representation cannot be secured, or legal aid is not available.
- b. Rule 8.01(3) should be interpreted in a manner that does not infringe upon the constitutional rights of parents and children. If that cannot be done then the Rule should be struck down as unconstitutional pursuant to section 52 of the *Constitution Act, 1867*.

THE PROPOSED DEFENDANT ARGUED

[17] The Court is empowered to make rules regulating its own procedure by virtue of the *Judicature Act*, R.S.N.L. 1990, c. J-4, and the rules so made are subordinate legislation for the purposes of the *Statutes and Subordinate Legislation Act*, R.S.N.L. 1990, c. S-27.

[18] The *Canadian Bill of Rights* applies only to federal legislation and does not impinge upon the exclusive power vested in the Province to promulgate legislation affecting property and civil rights pursuant to section 92 of the *Constitution Act, 1867*.

[19] The freedoms protected by section 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11 (the “*Charter*”), being the rights to life, liberty and security of the person, are not affected by Rule 8.01(3). In any event, the Proposed Defendant argued that the Applicant has not satisfied the threshold requirement of showing an infringement of section 7 of the *Charter*. In the alternative, if the Applicant’s rights under section 7 have been infringed, the Proposed Defendant said that Rule 8.01(3) is a legitimate exercise of the historic and long-standing common law power of the state to intervene to protect children. In other words, the Proposed Defendant argued that section 1 of the *Charter* applies.

[20] The Proposed Defendant argued that Rule 8.01(3) does not offend the equality rights set out in section 15(1) of the *Charter*.

[21] The Proposed Defendant said that there is no provision allowing a judge to exercise the discretion to allow a child to be represented by a non-solicitor.

ISSUES

1. Are Rules 5.07(1) and 8.01(3) within the legislative competence of the Province? If so, do the provisions in Rule 5.07(1) supersede the provisions in Rule 8.01(3)? Does the Court have discretion to grant exceptions under Rule 8.01(3)?

2. Should Rule 8.01(3) be struck down for infringement of any natural rights, fundamental freedoms, or civil liberties which exist on account of the provisions in the *Constitution Act, 1867*, the *Canadian Bill of Rights* or the *Charter*?

ANALYSIS

1. Are Rules 5.07(1) and 8.01(3) within the legislative competence of the Province? If so, do the provisions in Rule 5.07(1) supersede the provisions in Rule 8.01(3)? Does the Court have discretion to grant exceptions under Rule 8.01(3)?

[22] The *Judicature Act* acknowledges and continues the original court of criminal and civil jurisdiction that was first established in Newfoundland by statute in 1824, being the 5th year of the reign of George the 4th, and continued by the Royal Patent that was granted in the following year. The *Judicature Act* recognizes that the Supreme Court of Newfoundland and Labrador has all of the inherent powers of a superior court at common law. Those powers have been continuously exercised by the Court for the past 200 years.

[23] Section 54 of the *Judicature Act* establishes a Rules Committee and prescribes its composition. Section 55(k) empowers the Rules Committee to “make rules governing the pleading, practice and procedure generally of the court”.

[24] The *Judicature Act*, in turn, is a creature of the legislature of the Province. Its existence is due to the division of powers enumerated in sections 91 and 92 of the *Constitution Act, 1867*. In particular, the following heads of power located in section 92 are of importance:

13. Property and Civil Rights in the Province.
14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.

[25] It can be seen, therefore, that the Rules Committee is constitutionally empowered, through section 92(14) head of the *Constitution Act, 1867*, to make rules of procedure in civil matters in the courts which it has constituted and maintained – including the Supreme Court of Newfoundland and Labrador.

[26] Rules 5.07(1) and 8.01(3) were validly enacted and, according to the provisions of section 55(4) of the *Judicature Act*, are considered subordinate legislation for the purposes of the *Statutes and Subordinate Legislation Act*. The Rules, generally, have been published in the Newfoundland and Labrador Gazette and have the force of law effective upon their publication.

[27] Rules 5.07(1) and 8.01(3) are, therefore, within the legislative competence of the Province.

[28] What, then, is the relationship between Rule 5.07(1) and 8.01(3)? The Applicant argued that I should allow his Application under Rule 5.07(1) and, essentially, disregard Rule 8.01(3).

[29] Rule 5.07(1) states:

Any person, whether or not that person sues ... in any other representative capacity, may commence, carry on or defend a proceeding in the Court by a solicitor or in person.

[30] Rule 8.01(3), of course, requires that a guardian *ad litem* of a person under disability shall act by a solicitor. A child under the age of 18 is, by operation of the *Limitations Act*, S.N.L. 1995, c. L-16.1, section 15(5)(a), a person under a disability.

[31] The Applicant argued that because Rule 5.07(1) is broad and contains no limitation, it should allow him, as his child's parent and legal guardian, to commence an action on his child's behalf. He further argued that it is not necessary that he be

appointed a guardian *ad litem* and should be allowed to represent his child in his capacity as a parent.

[32] Legislation often commences with broad, overarching principles of law which, then, are narrowed down to specific instances or become subject to various exceptions. This is such a case. While the general rule is that a person may represent another and carry on an action, or defend one, in his personal and/or representative capacity – that must be taken to be the broad, overarching principle.

[33] Rule 8.01(1) provides an exception to the general rule contained in Rule 5.07(1). It stipulates that “a person under disability may not commence, defend, intervene or appear in any proceeding except by his or her guardian *ad litem*”. A guardian *ad litem* is a litigation guardian whose task is to conduct litigation on behalf of a disabled person.

[34] Rule 8.01(1) is mandatory. It broaches no exceptions. A child under the age of majority is a person under a disability according to law. A child is not capable, in his/her own right, to commence, defend, intervene in or appear in any proceeding. In order for a child to do so a child must be represented by a guardian *ad litem*.

[35] Rule 8.01(1) does not allow the Applicant to act on behalf of his dependent child *qua* parent. The Applicant must do so as a guardian *ad litem*. He need not be appointed to that role by the Court, but he must assume it if he wishes to advance an interest on behalf of his child. The Rule disallows the Applicant, however, from representing his child as an advocate in Court. The prohibition in Rule 8.01(3) is equally as mandatory as the requirement in Rule 8.01(1).

[36] There are policy reasons behind the requirement that a person under disability be represented through the agency of a guardian *ad litem* and by a solicitor in Court. The Rule ensures that the best interests of the person under disability are safeguarded through representation that meets an acceptable standard. It is not possible to presume a minimum standard of representation when the person seeking to represent the disabled person has no accredited qualifications.

[37] Solicitors carry insurance. If they are negligent in their representation of a client's interests, their policy of insurance guarantees recompense. Similarly, in the event of defalcation, the solicitor's policy of insurance guarantees recompense. Not so with a parent, who is not a lawyer, wishing to commence and prosecute an action on behalf of a minor.

[38] The Applicant argued that there is no language in Rule 5.07(1) that excludes a parent acting on behalf of their child. That might be so if the child is an adult. However, Rule 8.01(1) specifically directs that a person suffering from a disability, in this case a child who has not attained the age of majority, must be represented by a guardian *ad litem*. This Rule is mandatory. It does not permit any exceptions.

[39] Rule 5.07(1) does not apply to the Applicant's situation at all while his child is under the age of 18 years.

[40] The Applicant argued that the Rules are subordinate to other provincial laws. I think that the Applicant misunderstands the meaning of "subordinate legislation" to mean that it is, somehow, of less import and effect. That is not so. Subordinate legislation is simply legislation that has been brought into force by a delegated body other than the legislature – in this case a committee of judges, lawyers and representatives of government whose function is to write and revise the rules of court.

[41] The *Rules of the Supreme Court, 1986*, therefore, are not subservient to any other legislation. They stand on their own and, unless they conflict with provincial or federal legislation, have the full force and effect of law.

[42] I decline the Applicant's invitation to read Rule 5.07(1) liberally, remedially and in a manner that excludes or frustrates his access to the Court. Rather, I am bound to pay heed to the unambiguous direction in Rule 8 insofar as the representation of the interests of persons suffering from a disability is concerned.

[43] In his brief the Applicant stated: “Therefore, Rule 5.07(1) confers jurisdiction upon JW to represent IW, and no further procedural hurdle is required unless statutory authority provides otherwise”. The simple answer to this assertion is that statutory authority does provide otherwise, namely: Rule 8.01(3) – which has the force of statute as I have demonstrated earlier.

2. Should Rule 8.01(3) be struck down for infringement of any natural rights, fundamental freedoms, or civil liberties which exist on account of the provisions in the *Constitution Act, 1867*, the *Canadian Bill of Rights*, or the *Charter*?

[44] The answer to this question is no. Rule 8.01(3) should not be struck down. The following are my reasons.

[45] As I have demonstrated above, Rule 8.01(3) is valid subordinate legislation empowered by the *Judicature Act* which, in turn, is authorized by the head of power contained in section 92(14) of the *Constitution Act, 1867*. The antecedents of Rule 8.01(3) have statutory and constitutional primacy.

[46] The Applicant argued that section 3 of the *Children’s Law Act*, R.S.N.L. 1990, c. C-13, affirms that the child of natural parents retains that status regardless of marital relationship. While that may be so, it does not have any bearing upon the ability of a parent to maintain a lawsuit on behalf of his child.

[47] Similarly, the Applicant argued that section 4 of the *Children’s Law Act* requires that all legal instruments, including procedural rules, must be construed to reflect and uphold the parent-child relationship as defined in law. Section 4 of the *Children’s Law Act* states as follows:

For the purpose of construing an instrument or Act, a reference to a person or group or class of persons described in terms of relationship to another person by blood or marriage shall be construed to refer to and include a person who comes within the description by reason of the relationship of parent and child as determined under this Act.

[48] Rule 5.07(1) makes no reference to relationship by blood or marriage. I cannot give section 4 of the *Children's Law Act* the broad and pervasive meaning that the Applicant suggests.

[49] The Applicant cited sections 26(1) and (2) of the *Children's Law Act* for the proposition that parents are entitled to the custody of their children, including the rights and responsibilities attendant thereto. He posits that this includes decision-making and legal advocacy.

[50] I agree that custodial parents have the right to make decisions concerning the best interests of their child. Section 26 of the *Children's Law Act* exists for the purpose of outlining the custodial rights of parents. I do not agree, however, that the sections quoted by the Applicant give to parents the rights to practice law and represent their children in court.

[51] The Applicant cited section 57(2) of the *Children's Law Act* for the proposition that a parent is a proper person to act on behalf of their child. This characterization strains the intended meaning of the subsection far beyond what the legislature intended. The subsection says:

As between a parent of a child and a person who is not a parent of the child, the parent has a preferential entitlement to be appointed by a court as a guardian of the property of the child.

[52] The subsection simply says that a parent should have preferential entitlement to be appointed as a guardian of a child's property over a non-parent. The Applicant's suggestion to the contrary is not tenable.

[53] The Applicant cited a number of American decisions in his factum. This Court is not bound by American precedents and, in any event, the legal systems in Canada and the United States of America are sufficiently dissimilar to not warrant close scrutiny of the precedents cited.

[54] The Applicant posed a number of constitutional questions. I have reproduced each one in italics and provided my reply.

- *Does the Province have legislative competency to create laws that infringe, abrogate or abridge the natural rights, fundamental freedoms or civil liberties by virtue of section 92 of the Constitution Act, 1867?*

[55] The Province has the legislative right to pass legislation in the enumerated heads of power, 2 to 16, of section 92. In the exercise of those rights it is possible that fundamental freedoms or civil liberties could be infringed. Section 92(15), for example, provides that a province may imprison persons who have been found guilty of breaching laws passed in consequence of its exercise of powers under section 92. Imprisonment is antithetical to freedom and liberty. The Province's powers of infringing upon fundamental rights and freedoms is subject to section 1 of the *Charter* and, possibly, could be justified as being a reasonably necessary intrusion in a free and democratic society.

[56] The Applicant asked a very broad question to which there cannot be a precise answer. The answer is "Yes and No".

- *Does section 17 of the Constitution Act, 1867 imbue Parliament with the exclusive legislative competency to affect natural rights, fundamental freedoms or civil liberties?*

[57] Section 17 of the *Constitution Act, 1867* states:

There shall be One Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and the House of Commons.

[58] Section 17 of the *Constitution Act, 1867* establishes the structure of the federal government. It has nothing to do with exclusive legislative competence. The answer to the Applicant's question is "No".

- *If Parliament has exclusive legislative competence, does section 5(3) of the Canadian Bill of Rights apply to provincial laws?*

[59] The *Canadian Bill of Rights*, by its own terms (sections 2, 5(2) and 5(3)) does not apply to provincial laws. It has no impact upon the *Rules* because those Rules are the creatures of the exercise of provincial jurisdiction under the 92(14) head of the *Constitution Act, 1867*.

[60] The answer to the question is "No. The *Canadian Bill of Rights* does not apply to provincial laws".

- *Does Rule 8.01(3) infringe or deny the natural rights or fundamental freedoms assured by the Constitution and guarantee by sections 1(a), 1(b) and 2(e) of the Canadian Bill of Rights?*

[61] As noted above, the *Canadian Bill of Rights* does not, in any way, affect provincial legislation.

- *If Rule 8.01(3) does infringe or deny the natural rights or fundamental freedoms secured by the Constitution and guaranteed by the Canadian Bill of Rights is the Rule unreasonable or ultra vires and, therefore, inconsistent with section 52 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11?*

[62] Section 52 of the *Constitution Act, 1982* recites the fact that the Constitution is the supreme law of Canada and laws inconsistent with it are to have no force and effect. I have demonstrated, through the course of this decision, that the *Rules* are validly enacted in accordance with the *Judicature Act* which, in turn, is authorized by the section 92(14) head of the *Constitution Act, 1867*.

[63] Rule 8.01(3) does not infringe or deny any natural rights or fundamental freedoms secured by the Constitution. It exists to protect the interests of persons under disability, such as children – who are under a legal disability until they attain the age of majority.

[64] Children are not prejudiced because they are unable to be represented by a solicitor under Rule 8.01(3). Provision is made in the *Limitations Act*, section 15(1) for the limitation period to be extended until the child attains the age of 18 years – at which time the child ceases to be under a legal disability and the limitation period begins to run. If IW is unable to be represented by a solicitor because he has not attained the age of 18 years, he will be able to represent himself when he has reached the age of 18 without the necessity of the appointment of a guardian *ad litem* or being represented by a solicitor. At that time should IW wish to be represented by his father, Rule 5.07(1) could be invoked.

[65] Section 8.01(3) should be viewed as a procedural limitation that exists for the protection of minors. To the extent that it has any negative impact upon the life, liberty and security rights protected by section 7 of the *Charter*, I am of the view that it is a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society.

[66] In *Weidenfeld, Re* (2007), 162 C.R.R. (2d) 359, 162 A.C.W.S. (3d) 235 (Ont. Sup. Ct. J.), a plaintiff father sought to sue for damages against a school board and the province for negligence, malfeasance and/or nonfeasance in public office on behalf of himself and his son. Rule 7.05(3) of the *Rules of Civil Procedure* (R.R.O. 1990, Reg. 194) required that the litigation guardian be represented by a solicitor. Mr. Weidenfeld challenged the rule as being inconsistent with the plaintiff's rights

under sections 2(b), 7 and 15(1) of the *Charter*. He argued that he had a substantive right, as a parent, to litigate in Superior Court as an advocate for his son.

[67] Mr. Weidenfeld, like the Applicant, cited statutes that recognize a parent's rights of custody and access to his child, and the common law authority that a parent has a liberty interest in relation to a child that, in some circumstances, is protected by section 7 of the *Charter*.

[68] Mr. Weidenfeld, like the Applicant, argued that he has substantive rights, as a parent, to decide what is in the best interests of his son. He argued, like the Applicant, that his parental rights, protected by section 7 of the *Charter*, include acting as advocate for his son in his son's civil action.

[69] Mr. Weidenfeld, like the Applicant, relied upon American precedents to press his point.

[70] In the *Weidenfeld* case Bryant J. held, as I have done, that the Rule protects persons under a disability from unscrupulous representatives, as well as from friends and family members who mistakenly believe they are acting in the best interests of a minor. Bryant J. noted that non-lawyers lack the training and experience, they are not bound by a code of ethics, they do not carry liability insurance and there is no solicitor-client privilege protecting confidential communications.

[71] Bryant J. cited the comments of La Forest J. at paragraph 63 in *Godbout v. Longueuil (Ville)*, [1997] 3 S.C.R. 844, in which La Forest J. adopted the comments of Dickson C.J. in *R. v. Oakes*, [1986] 1 S.C.R. 103 and *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, relating to how individual freedom could be restricted by the state:

Freedom of the individual to do what he or she wishes must, in an organized society, be subjected to numerous constraints for the common good. The state undoubtedly has the right to impose many types of restraints on individual behaviour, and not all limitations will attract *Charter* scrutiny. ...

[72] Lamer C.J. stated in *New Brunswick (Minister of Health & Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46, that for a restriction of security of the person to be made out the impugned state action must have a serious and profound effect on a person's psychological integrity.

[73] In *Weidenfeld*, Bryant J. stated at paragraph 29 of his decision:

If this Court is wrong and it is found that Rule 7.05(3) deprives Mr. Weidenfeld's liberty or security of the person interests, the Court finds that such deprivation was in accordance with the principles of fundamental justice. The common law has long recognized the power of the state to intervene to protect children. Rule 7.05(3) is one part of a regulative scheme to protect persons under a disability in Ontario and other provinces. The purpose of these rules is to protect vulnerable members of our society from being taken advantage of due to their inexperience, and to protect them from improvident decisions. These vulnerable persons are in need of protection and these rules are in furtherance of the government's *parens patriae* jurisdiction. Accordingly, the Court finds that the requirement that a litigation guardian for a person under a disability be represented by a lawyer is in accordance with the principles of fundamental justice.

[74] The literature is rife with cases in which courts in various jurisdictions have disallowed persons who are not solicitors from acting on behalf of persons with disabilities. They include:

- *Daniel v. Insurance Corp. of British Columbia*, 2002 BCCA 715;
- *Finnegan (Guardian ad litem of) v. Gronow* (1998), 19 C.P.C. (4th) 173, 78 A.C.W.S. (3d) 248 (B.C. S.C.);
- *Sahyoun v. Ho*, 2011 BCSC 567;
- *Champagne v. Sidorsky*, 2012 ABQB 522; and
- *Flewelling v. Scotia Island Property Ltd.*, 2009 NSSC 94.

[75] I agree with Bryant J.'s analysis in *Weidenfeld* and am persuaded by his course of reasoning. I decline the Applicant's invitation to use my discretion to allow him to represent his son. I do that because, in the final analysis, I have no discretion in the face of the Rule's clear and unambiguous direction.

CONCLUSION

[76] In the result, the Application is dismissed.

[77] The Proposed Defendant shall be entitled to costs under Column III of the Schedule of Costs.

VIKAS KHALADKAR
Justice