

3 MODELS FOR PRESENTING CHILDREN’S INFORMATION

AMICUS CURIAE	GUARDIAN AD LITEM	TRADITIONAL ADVOCATE
<ul style="list-style-type: none"> • “friend of the court” • Assists the court in an impartial exposition of the facts, the state of the law, and the interests of non-participants in court proceedings • Assumes a neutral position with respect to the outcome of the litigation • Function of counsel is inquisitive, not adversarial • Allegiance of the <i>amicus</i> is to the court and not to the litigants • No obligation to ascertain the wishes of the child or to present those wishes to the court • Effectively a court-appointed expert, whose role is to assist the court in determining the child’s best interests • A central question that arises is whether an <i>amicus</i> is appropriate if a child is capable of expressing views and/or instructing counsel 	<ul style="list-style-type: none"> • Independently investigates, assesses, and advocates the child’s best interests • Presents evidence by soliciting expert testimony, submitting reports, and examining & cross-examining witnesses • Will solicit child’s views and report them to the court, but will not necessarily advocate for what the child wants • May disregard a child’s instructions if counsel is of the opinion that the instructions are not consistent with the child’s best interests • A central question that arises is whether a lawyer is in a better position than a judge (or in any position at all) to assess the best interests of a child 	<ul style="list-style-type: none"> • Provides independent legal representation in a traditional solicitor-client relationship, giving the child a strong voice in the proceedings • Advocate is “the legal architect who constructs a case based on the child’s views”. • Lawyers do not judge the position that they are asked by their child client to advocate; rather, the function of counsel is to present the client with options, recommend a course of option and then leave the ultimate decision to the client. • Counsel is then under an obligation to put forward the child’s views for the court’s consideration • In presenting evidence in support of the child client’s position, the lawyer is prohibited from disclosing to the court his/her personal convictions respecting the disposition of the matter. • A central question that arises is whether the child has the <i>capacity</i> to articulate views and instruct counsel