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You Sue After an Accident > Can Your Kids Be Examined About Your Claim?

You are hurt in a car accident and, in fairly typical fashion, your adult kids are named as **Family Law Act** plaintiffs in your lawsuit. That is, your kids are making a (normally minor) claim indicating that they have also suffered loss arising from your accident, typically termed loss of care, guidance and companionship.

During the litigation and on the eve of Trial, your kids decide to abandon their claim for damages – because their claim overall may not be particularly significant for a host of reasons.

In this situation, can the defence still require your kids to submit to an Examination for Discovery and answer questions about your health and claims of loss and damage arising from your car accident?

In the recent case of **Blenkhorn v. Mazzawi** (2010 Ontario Superior Court of Justice), the defence sought examination of the plaintiff's two adult children despite their abandonment of their FLA claims.

It was held, on the facts presented at motion, that the adult children would not be ordered to be examined either as party litigants prior to the discontinuance of their action nor as non-parties. In this regard, the analysis included consideration of the emphasis in the new **Rules of Civil Procedure** on proportionality and expeditious conduct of litigation.

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