



**FAMILY LAW
SECTION
NEW ZEALAND LAW SOCIETY**

NZLS EST 1869

**LAWYER FOR THE CHILD
BEST PRACTICE GUIDELINES**

**ACTING FOR CHILDREN UNDER THE CARE OF CHILDREN ACT 2004 AND THE
ORANGA TAMARIKI ACT 1989**

1. INTRODUCTION

- 1.1 The appointment of a lawyer to represent a child occurs under the specific legislation the proceeding has been brought.
- 1.2 In all proceedings in the Family Court, the role of lawyer for the child as described in these guidelines is prescribed by section 9B of the Family Court Act 1980 and guided by the United Nations Convention on the Rights of the Child (UNCROC).
- 1.3 The welfare and best interests of the child is the paramount consideration of the Family Court in proceedings that involve children under these Acts.
- 1.4 Except in circumstances where a child is exercising his or her right of appeal, (sections 143 of the Care of Children Act 2004 (COCA) and section 341(2) of the Oranga Tamariki Act 1989 (OT Act), and in limited circumstances as prescribed by these Acts (section 31 of COCA), a child is not a party to the proceedings.
- 1.5 At all times the lawyer shall conduct him/herself in accordance with the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008 (rules).
- 1.6 These guidelines replace all previous guidelines issued by the New Zealand Law Society (Law Society) on the role of lawyer for child.

2. DEFINITIONS

- 2.1 The term 'child' includes child as defined in COCA and both 'child', 'children' and 'young person' as those terms are defined in the OT Act.
- 2.2 References to 'the lawyer,' unless otherwise stated, means a lawyer appointed by the court to act for a child.
- 2.3 References to 'report writer' means any social worker or report writer from whom a report has been requested under section 132 or 133 of COCA or under section 178, 186 or 187 of the OT Act. 'Specialist report' has a corresponding meaning.

2.4 References to the Ministry for Children, Oranga Tamariki (OT) means the chief executive of the Ministry for Children.

3. OBJECT

3.1 The object of these guidelines is to promote quality and consistency of practice of the role as required by section 9B of the Family Court Act 1980 or the OT Act, or any other Act under which they are appointed.

3.2 The lawyer must exercise their professional judgement about what is relevant, appropriate and in the best interests of the child in each particular case to report, including exercising discretion about when a child's views are conveyed to the court.

4. GUIDING PRINCIPLES

4.1 A child has the right to competent representation from an experienced and skilled lawyer.

4.2 A child must be given reasonable opportunities to be heard (either directly or indirectly) in any judicial and administrative proceedings affecting them, as provided for by section 6(2)(a) of COCA, sections 5(d) and 11(2) and (3) of the OT Act and Article 12.2 of UNCROC.

4.3 A child must be given a reasonable opportunity to express his or her views and any views expressed must be taken into account by the court (section 6(2)(b) of COCA and section 11(2)(d) of the OT Act).

4.4 A child has the right to information about the case in which he or she is involved, including information on the progress and outcome of that case. This means:

- (a) the child should be consulted at all important junctures in proceedings as appropriate to their age and maturity;
- (b) depending on the age and understanding of the child, they should be regularly updated and able to contact their lawyer if necessary; and
- (c) information should be shared with the child in an age appropriate way and with care exercised around sensitive adult information.

4.5 The manner of the discussion with the child shall take into account the child's age, culture, maturity and level of understanding.

4.6 There is no obligation on a child to express any views to the lawyer.

5. ROLE OF THE LAWYER FOR THE CHILD

5.1 The lawyer is to provide independent representation and advice to the child in a manner that the lawyer considers promotes the welfare and best interests of the child, notwithstanding that the child's views may be in conflict with the lawyer's assessment of how the welfare and best interests of the child are best promoted.

5.2 The lawyer must explain to the child that any views expressed to the lawyer by the child that are relevant to the proceeding will be communicated to the court.

- 5.3 The lawyer has a duty to ensure that any views expressed by the child *to the lawyer* (and not expressed to another person, such as a psychologist, social worker or teacher) on matters affecting the child and relevant to the proceedings, are communicated to the court. The manner in which these views are conveyed and the timing of this is in the lawyer's discretion. If the child requests that information shared with the lawyer is kept confidential the lawyer must then exercise discretion about disclosing this information to the court or to any agency (for example, Oranga Tamariki) and if such disclosure is made, the lawyer is to explain to the child why this is necessary.
- 5.4 The lawyer must exercise professional judgement about what is relevant, appropriate and in the best interests of the child to report.
- 5.5 Where a lawyer has been appointed to represent a number of children, the lawyer must be alert to the possibility of conflict. The lawyer may be obliged to decline to act for one or more of the children in such circumstances.
- 5.6 The lawyer has a duty to ensure that all factors relevant to the child's welfare and best interests, are before the court.
- 5.7 The lawyer should remember that they are obliged to convey the views expressed by the child irrespective of whether they may be in conflict with the lawyer's assessment as to the child's welfare and best interests. The lawyer should convey both the child's views and the lawyer's assessment of what they consider to be in the child's welfare and best interests.
- 5.8 The lawyer must be aware of, and actively manage, the risk of the child being exposed to systems abuse.¹

6. ROLE OF THE LAWYER FOR THE CHILD IN ORANGA TAMARIKI PROCEEDINGS

- 6.1 Once appointed under the OT Act, the lawyer has the role set out in section 9B of the Family Court Act 1980.
- 6.2 The lawyer has additional statutory functions as set out in the OT Act, such as:
- (a) Explaining the proceedings, the order and any appeal rights to the child or any parent or guardian or other person having the care of the child, in a manner and in language that can be understood by them.
 - (b) For any proceedings before a court the lawyer must:
 - (i) encourage and assist the child to participate;
 - (ii) ensure that reasonable assistance is given for the child to understand the reasons for the proceedings and how different options are available and could affect them;
 - (iii) ensure that the child has reasonable opportunities to freely express their views on matters affecting them; and
 - (iv) ensure that support is provided for the child to express their views if the child has difficulties with this.
 - (c) Attending the Family Group Conference (FGC) as an entitled person (who must consent to the plan being formulated).

¹ Systems abuse is defined as the over exposure of children to multiple interviews by professionals.

- (d) Making any applications that are considered necessary in the welfare and best interests of the child.²
- (e) Consenting to the disclosure of a protected communication by a registered medical practitioner or a clinical psychologist on behalf of their client child.³
- (f) Considering and responding to as appropriate the review of a plan on behalf of a child.⁴

6.3 While the lawyer's role is often in abeyance between reviews, the lawyer will continue to have an ongoing role and should be:

- (a) advised and consulted about any important changes to the plan which occur between reviews; and
- (b) part of any professional case consults held by OT.

6.4 Once the plan and report are available for review and a court date allocated, the lawyer will need to meet with the child, explain the plan (and proposed orders) to them and file a report on their views and best interests.

6.5 The lawyer may decide to also meet with the caregivers, parents, guardians or any other person in preparation for filing any report to the court.

6.6 If the lawyer has concerns about the report or does not agree with the report, he or she should discuss this with counsel for OT so that their position can be considered and possibly included (or altered) before the report is filed.

6.7 The judge should be advised of any dispute about the plan when the plan is filed.

7. RELATIONSHIP WITH THE CHILD

7.1 The lawyer must meet with the child he or she is appointed to represent unless, because of exceptional circumstances, a judge directs that it is inappropriate for the lawyer to meet with the child (section 9B(2) and (3) of the Family Court Act 1980).

7.2 The lawyer should maintain appropriate professional boundaries with the child.

7.3 The lawyer in meeting with the child must, if it is appropriate to do so, ascertain and report on the child's views on matters affecting the child that are relevant to the proceedings.

7.4 In deciding whether or not it is appropriate to ascertain the child's views, the lawyer should consider:

- (a) whether the circumstances are such that the child should not be interviewed on a particular occasion or in a particular environment;
- (b) that having met the child, the issues are such that the lawyer should not attempt to ascertain the views of the child for reasons pertinent to that child;
- (c) that although it is necessary to meet the child (to have an understanding of who is being represented), the issues are such that it is not appropriate to ascertain the child's views.

² Such as applications for interim custody, services, restraining or support (sections 78, 86A, 88 and 92) or an order to vary or discharge an order (under section 126), or request a medical, psychiatric or psychological report (under section 178) or a cultural or community report (under section 187), rehearing (under section 204).

³ Oranga Tamariki Act 1989, section 196.

⁴ Oranga Tamariki Act 1989, sections 132(1)(b) and s 135(3)(e).

7.5 The timing and venue for such a meeting, and any further meetings, should be at the discretion of the lawyer. However, the lawyer shall meet with the child at a time which ensures that the child's views are up to date at the time of the hearing so that they can be taken into account by the court.

7.6 When meeting with the child the lawyer shall:

- (a) make it clear to the child that they do not have to express any view (section 9B(1)(b) of the Family Court Act 1980);
- (b) explain that a child's views are part of what the judge must consider when deciding what is in the child's welfare and best interests;
- (c) consider an appropriate process for disclosure of information the child would prefer to remain confidential; and
- (d) explain to the child that he or she is not responsible for any decision which will be made by the court.

7.7 At the conclusion of the case the lawyer must provide advice to the child about:

- (a) the outcome of the case;
- (b) any right of appeal against a decision of the court; and
- (c) the merits of pursuing any such appeal.

8. INTERVIEWING THE CHILD AT SCHOOL

8.1 When interviewing the child at school, lawyers should refer to the Family Law Section Lawyer for Child Protocol with Schools "*Lawyers for children appointed by the Family Court – A resource for schools and lawyers for children*" (see Appendix One).

9. CASE MANAGEMENT

9.1 The lawyer should endeavour to move the case towards resolution, including where appropriate, in the lawyer's assessment of the child's welfare and best interests, assisting the parties to reach an agreement.

9.2 In all proceedings, except OT Act proceedings, if the lawyer considers there are care and protection issues that may justify OT involvement, the lawyer should take the necessary steps to refer the matter to OT directly or via a judicial referral under section 15 or 19 of the OT Act.

9.3 The lawyer should be alert to the possibility of records held by the court, the Police, OT and the Ministry of Justice that may be relevant to the proceedings, and where appropriate, obtain copies of those records.

9.4 In OT Act cases where there has been a referral to a Family Group Conference (FGC), the lawyer shall:

- (a) be proactive in ensuring an FGC is held as soon as possible; and
- (b) be present at the FGC to ensure that the focus is on the best interests of the child.

9.5 If the lawyer ceases to act for the child, and proceedings continue in the Family Court, he or she must ensure that the new lawyer receives all relevant information held by him or her.

10. BRIEFS BY THE COURT

- 10.1 It is the task of the court to set the brief for the lawyer.
- 10.2 Section 9B of the Family Court Act 1980 prescribes the statutory role of the lawyer.
- 10.3 The lawyer should not accept any brief that requires the lawyer to undertake an assessment of the safety of the child. Undertaking an assessment of the safety of the child is the role of the court (see para 14.3).

11. LAWYER FOR THE CHILD REPORTS

- 11.1 The lawyer will file reports to the court from time to time. These reports should be based on their meetings with the child and documents filed with the court and avoid unnecessarily introducing evidence.
- 11.2 Reports filed prior to a directions conference often include information from a variety of sources, including:
 - (a) family violence reports
 - (b) information from pre-schools or schools and other professionals
 - (c) information from other third parties such as grandparents/whanau
 - (d) information from the child
 - (e) information obtained by OT, including CYRAS notes and/or from discussions with social workers
- 11.3 The lawyer should seek written acknowledgement from the person providing the information about how and with whom the information may be shared. Any person providing information should be advised that they may be required to give evidence at any court hearing.
- 11.4 The lawyer should advise the person providing the information to exercise judgement in terms of the need to preserve the relationship between that professional and the parties.
- 11.5 Where possible, information should be introduced by an affidavit with an exhibit attaching a letter and/or report from the person who can confirm the truth of the information.
- 11.6 The lawyer should consider having information from third parties admitted as evidence by consent, including family violence reports and criminal conviction records for the parties, and consult with other counsel or the parties about filing such documents as an agreed bundle of documents.
- 11.7 The lawyer may consider providing a summary of the information on the basis that an affidavit will be filed if the information is disputed by a party.
- 11.8 Third party information to be referred to in the report should ideally be disclosed to all parties, prior to it being included in the report. This allows parties to respond to the information prior to it being put before the court. If a party disputes the information, that party can address the issue in evidence.
- 11.9 Should the matter need to proceed to a hearing the lawyer shall ensure that any contentious information received is filed by way of an affidavit.

12. JUDICIAL MEETING

- 12.1 A judge has discretion as to whether or not to meet with a child who is the subject of proceedings.

- 12.2 The lawyer shall advise the parties and the court of the child's views about such a meeting and whether such a meeting is appropriate.

13. RELATIONSHIP WITH THE PARTIES AND THEIR COUNSEL

- 13.1 Where a party to a proceeding is represented by his or her own lawyer, the lawyer should obtain the consent of the party's lawyer before making direct contact with that party in accordance with their professional obligations under the rules.
- 13.2 The lawyer should explain the role of the lawyer to the parties so they have an understanding of the role of the lawyer and, in particular, that any communication with a party is not subject to privilege and may be shared with others at the lawyer's discretion.
- 13.3 Any information provided to the court by the lawyer must be provided to all of the parties except in circumstances where the disclosure of information would be:
- (a) likely to place at risk the health (including mental health) and safety of a child or any other person; or
 - (b) in breach of the law or in breach of an order of the court.

14. ROLE OF THE LAWYER IN NEGOTIATION BETWEEN THE PARTIES

- 14.1 The lawyer should explore alternative methods of resolution where it is clearly in the child's welfare and best interests rather than have the matter determined by the court.
- 14.2 The lawyer should consider whether safety issues would prevent a negotiated outcome.
- 14.3 It is the role of the court and not of the lawyer to make findings on safety and the assessment of risk. If issues are disputed the court will need to make findings of fact. The lawyer must not compromise on issues where a finding of fact must be made, for the sake of expediency.
- 14.4 When negotiations between parties takes place, the lawyer should ensure that parties have the opportunity to seek legal advice and that lawyers for the parties are given the opportunity to be present.

15. OTHER PROFESSIONAL ISSUES

- 15.1 Before accepting any appointment the lawyer should be satisfied that he or she is able to give the time which the case requires.
- 15.2 Appointment of the lawyer is personal. The lawyer should not delegate substantive steps in the fulfilment of the brief to a non-lawyer for the child. Where an agent is to be briefed, the agent is to be properly instructed and must be listed on the current court-approved lawyer for child list.
- 15.3 The lawyer must be aware of issues including gender, ethnicity, sexuality, culture, religion and disabilities, in dealing with issues in any particular case.

- 15.4 The lawyer must undertake professional supervision appropriate to the nature and extent of their lawyer for child practice.
- 15.5 Professional supervision is a contractually agreed working relationship between a supervisor (professionally trained and accredited) and a client supervisee (lawyer). Within this confidential relationship, the supervisor meets with the supervisee for the purpose of conducting a self-reflective review of practice, to discuss professional issues and to receive feedback on all elements of practice, with the objective of ensuring quality of service, improving practice and managing stress. The primary focus of supervision is on the client of the supervisee and to maximise the competence of the supervisee in the provision of services to their clients.
- 15.6 The lawyer should undertake a minimum of five hours of active lawyer for the child practice per annum and must complete a minimum of five hours of continuing professional development (CPD) in areas specific to practising as a lawyer for the child within each CPD year. CPD is defined in rule 3.1(i) of the Lawyers and Conveyancers Act (Lawyers: Ongoing Legal Education – Continuing Professional Development) Rules 2013. The five hours of CPD may be part of the lawyer’s annual CPD requirement of ten hours.
- 15.7 All newly appointed lawyers to the list must be mentored by a senior lawyer for child for 12 months from when they receive their first appointment. A mentor will be appointed by the panel at the time the lawyer is appointed to the ministry’s list. A mentor may claim up to two hours CPD pursuant to para 15.6 in each membership year.
- 15.8 All lawyers for children appointed to the ministry’s list have an ongoing obligation to notify the liaison judge of the court where they receive appointments if the Law Society takes disciplinary action and/or upholds a complaint against the lawyer, and to notify the Principal Family Court Judge if they become the subject of any pending criminal charges or Police investigation.
- 15.9 A lawyer also has an ongoing obligation to disclose to the Law Society, as soon as practicable, information about any matter that might affect their continuing eligibility to hold a practising certificate.

16. LAWYER FOR THE CHILD AND REPORT WRITERS

- 16.1 The report writer is the court’s witness.
- 16.2 The lawyer and the report writer may not always agree on the conclusion reached in the psychologist’s report.
- 16.3 Where a specialist report is obtained under COCA, the lawyer may give or show the report to the child only if the court orders. The lawyer shall make a recommendation to the court on this issue. However, the lawyer should explain to the child the purpose and contents of the report, unless the lawyer considers that the child is too young to understand the report, or to do so would be contrary to the welfare and best interests of the child.
- 16.4 Where a report is obtained under the OT Act, the lawyer may give the report to the child unless the court orders that the whole or any part of the report not be disclosed to the child (section 192 OT Act).

- 16.5 The lawyer should check the availability of the report writer prior to the setting down of a hearing and ensure the report writer is aware of the hearing date (once it has been set) and that the report writer is available.
- 16.6 The lawyer should liaise with the registry once a hearing date has been set to ensure that the court has advised its witness of the hearing date and has provided the report writer with a copy of all updating affidavits and reports if these have been filed after the psychologist was first briefed.
- 16.7 The lawyer should liaise with the report writer over the timing of when they need to attend the hearing.
- 16.8 Subject to the court's discretion, if requested or considered appropriate, the lawyer should ensure that the notes of evidence are made available for the report writer.
- 16.9 The lawyer should communicate with the report writer to identify issues for the hearing. The lawyer and the report writer should not discuss how the questions may be answered.
- 16.10 The lawyer should also communicate with the report writer and advise of possible settlement proposals that the report writer may be questioned about.
- 16.11 The lawyer should check that the court has advised the report writer of the court's decision and provided a copy of the decision to the report writer at the conclusion of the proceedings.
- 16.12 If there is a procedural issue that arises during the hearing, the lawyer will explain it to the report writer.

17. ROLE OF LAWYER FOR THE CHILD IN PREPARATION FOR AND AT A HEARING

- 17.1 If the lawyer wishes to call any person as a witness, the lawyer must ensure, prior to the hearing that the proposed witness knows of the hearing and is available. Nothing in this paragraph shall excuse the lawyer from complying with rule 48(1) (evidence by affidavit) and rule 52D (restrictions on steps to be taken after notice of hearing date given in non-COCA cases) of the Family Court Rules 2002.
- 17.2 At the hearing the lawyer should take all steps necessary to ensure that the court can determine the welfare and best interests of the child. This will include:
 - (a) identifying all relevant issues which need to be determined in regard to the child's welfare and best interests
 - (b) ensuring that the court has all the necessary information relevant to the welfare and best interests of the child, including the child's views relevant to the proceedings
 - (c) calling evidence where appropriate (other than any court's witness)
 - (d) cross-examining to ensure that all relevant issues are fully explored, having regard to the time limits imposed by rule 416ZF(2) of the Family Court Rules 2002 in COCA proceedings
 - (e) making submissions on behalf of the child
 - (f) not giving evidence

18. GUARDIANSHIP (WARDSHIP) OF THE COURT – section 31 of COCA

- 18.1 The lawyer should not make an application to the court for guardianship of the court (wardship), nor accept an appointment as agent for the court.
- 18.2 The lawyer should be aware that making an application for guardianship (wardship) will expose the lawyer to *inter partes* costs and the mandatory cost contributions award.

**Caroline Hickman
Chair
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Appendix One

Family Law Section Lawyer for Child Protocol with Schools “*Lawyers for children appointed by the Family Court – A resource for schools and lawyers for children*”.

LAWYERS FOR CHILDREN APPOINTED BY THE FAMILY COURT A RESOURCE FOR SCHOOLS AND LAWYERS FOR CHILDREN

INTRODUCTION

Executive summary

School can be an important source of information for lawyers for children involved in cases relating to the care of children. When a child's parents or caregivers are involved in Family Court proceedings, it is often necessary for a lawyer to seek information from the school about the child's wellbeing and educational achievement, or to visit them on "neutral ground" where the child can feel relatively safe and express their views openly.

Family disputes in court can make children vulnerable and it is important for schools and lawyers to work collaboratively in the best interests of the child.

Lawyers appointed by the Family Court to represent a child are known as "lawyer for the child" (or "counsel for the child" in Children, Young Persons and Their Families Act proceedings).

This document is intended as a guide for schools and for lawyers for children. It is intended to be of general application to primary, intermediate and secondary schools and may also be useful guidance for early childhood educators (including kindergartens).

Key points

- Requests for information about a child for Family Court purposes are made by lawyer for the child, a specialist advocate for the child appointed by the Family Court.¹
- Sometimes parents make requests for information from schools.
- The legal bases for withholding information are:
 - the Official Information Act 1982;
 - the Education Act 1989; and
 - the Privacy Act 1993.
- Principle 11 of the Privacy Act 1993 is particularly relevant to disclosure of information from schools when such disclosure is deemed necessary for the conduct of any proceedings before any court (see **Appendix One**).

¹ Family Courts Act 1980, section 9B.

- Lawyer for the child may wish to interview the child at school. Parental or guardians' consent is not needed for obtaining information or visiting the child at school, but is normally sought by lawyer for the child and confirmed to the school.
- Lawyer for the child is not a "children's worker" as defined in section 23(1) of the Vulnerable Children Act 2014 and does not therefore require Police vetting.
- The child is entitled to privacy and should be able to meet with the lawyer for the child without a teacher or a third party present.
- As schools need to continue to work with parents and students well after court proceedings are concluded they should frame information in a non-judgmental and neutral way where possible, and only offer views or opinions within their area of expertise.
- Where any decisions need to be made by the Family Court, the welfare and best interests of the child is the paramount consideration. These principles provide useful guidance to schools when considering provision of information and permitting lawyer for the child to interview a child at school.
- These guidelines have been developed in co-operation with the Ministry of Education, the School Trustees Association and the Family Law Section of the New Zealand Law Society. If further information is required, please contact the appropriate professional body for your organisation.

The guide

1. This guide has been developed as a helpful resource about the provision of information requested and to ensure:
 - that lawyer for the child's contact with the child and school staff is not disruptive or disturbing;
 - that there are shared understandings about the role of each party.

General – lawyers appointed by the Family Court

2. Only lawyers who satisfy strict criteria set down by the Principal Family Court Judge will be appointed as a lawyer for the child. The criteria are based on education, experience and suitability for the role. Usually only senior lawyers will be appointed.
3. In most proceedings involving the care and welfare of a child, a lawyer will be appointed for the child by the Family Court. Proceedings that involve children include applications for:
 - day-to-day care and contact orders (previously known as custody and access orders);
 - other disputes about guardianship such as disputes over relocation, non-routine

medical matters, religion and choice of school;

- care and protection cases brought by Child Youth and Family (Ministry of Social Development), under the Children, Young Persons and Their Families Act 1989.
4. A lawyer for the child is an advocate for the child and must ensure that all relevant information is placed before the Court, including the child's views on all matters to be decided by the Court that will affect the child.²
 5. In carrying out their role, the lawyer for the child may need to contact, or even visit, the child's school to obtain information about the child and his or her progress at school.

School protocols

6. Some schools have their own protocols or guidelines for dealing with lawyers who request information about pupils.
7. If your school has such a document, please make this available to the lawyer as soon as possible so that the terms of that protocol can be respected and followed by the lawyer for the child.

REQUESTS FOR INFORMATION

Official information

8. Official information is general information held by government agencies including schools. Other information will generally be provided by the Principal on request.
9. There is a general principle that information should be made available unless there are good grounds for withholding it. If a request under the Official Information Act 1982 is refused, an application may be made to the Ombudsman for a review of the decision.

Privacy Act 1993

10. Principle 11 of the Privacy Act 1993 prescribes the limits on disclosure of personal information. Disclosure by the school in terms of the Privacy Act 1993 is permitted when:
 - a. the disclosure of the information is one of the purposes in connection with which the information was obtained or directly related to such purposes.³

² Care of Children Act 2004, section 6; Family Courts Act 1980, section 9B(1)(b); United Nations Convention on the Rights of the Child, Article 12.

³ Privacy Act 1993, Principle 11(a).

- b. schools may be requested to make disclosure to a public sector agency acting under a specified statutory authority (e.g. Police, Child Youth and Family, Work and Income New Zealand).
 - c. disclosure is deemed as necessary for the conduct of proceedings before any court.⁴
11. The Privacy Act 1993 also sets out reasons for which a request for information may be refused, for example, in the case of an individual under the age of 16, and where the disclosure of that information would be contrary to that individual's interests.⁵
12. Sometimes these statutory provisions can appear to be in conflict, but with care, tact and diplomacy a route through the various provisions can usually be found.

Information from schools - contact from lawyer for the child

13. As a matter of prudence and courtesy, a lawyer for the child seeking information from the child's school should:
- a. Make contact with the Principal in the first instance. Lawyers should not write to individual teachers, guidance counsellors or administrative staff.
 - b. Correspondence should be marked "Strictly Private and Confidential" and include a copy of the letter of appointment from the Court (or citing the Family Court name, file number and the name(s) of the children) and should detail the general nature of the information sought.
 - c. If the school requires clarification, lawyer for the child may need to explain the nature of the particular proceedings, including legal concepts such as guardianship, day-to-day care and contact and explain the distinction between proceedings under the Care of Children Act 2004 and the Children, Young Persons and Their Families Act 1989.
 - d. Lawyer for the child should make clear to the school that:
 - (i) no legal privilege will attach to any information supplied by the school;
 - (ii) information supplied may become known to all those involved in the proceedings and confidentiality cannot be guaranteed about information provided;
 - (iii) there is no property in a witness. Therefore while it is preferable that school information is put into evidence via lawyer for the child, it is possible that any party may require a member of the school staff to give evidence in the court proceedings.

⁴ Privacy Act 1993 (Principle 11(e)(iv)).

⁵ Privacy Act 1993, section 29(1)(d).

- e. Lawyer for the child should at all times:
 - (i) be prepared to provide confirmation of their identity, appointment and details of the information they are seeking; and
 - (ii) only make unannounced visits to schools if there is an unexpected and urgent need.

- f. Decide with care whether the school's evidence is both relevant and essential.
 - (i) In the event that evidence is to be filed, unless the school requires their lawyer to act, lawyer for the child should prepare the affidavit and take responsibility for adequately briefing and preparing the school staff member.
 - (ii) Where a school's evidence is to be given by way of Affidavit or orally, many schools may prefer to be formally compelled under a Witness Summons even where an informal discussion has already taken place.
 - (iii) As far as is practicable, lawyer for the child should ensure that if a teacher is required in court, that their evidence is called at a time most convenient to the school.
 - (iv) In some cases, the Court will accept a written statement from the school being admitted into evidence by consent without needing the teacher to be called in court. Schools should be aware that any evidence provided (even as a letter or email) may mean that a teacher is required to give evidence.
 - (v) It is preferable that evidence about a child is provided from the primary source (i.e. the class teacher rather than the Principal) and that the evidence is limited to matters of fact or opinion in which the teacher has demonstrable expertise as an expert.

- g. Where parental consent to the disclosure of information is not forthcoming, lawyer for the child may pursue a request for disclosure of information from the school.

Information from schools – general matters

- 14. Lawyer for the child has no greater rights to information than may be conferred by the Official Information Act 1982 or the Privacy Act 1993.
- 15. If the school raises safety concerns about the child, the school should immediately make a report of concern to Child Youth and Family if appropriate.
- 16. In circumstances where lawyer for the child seeks to interview individual teachers and/or guidance counsellors, that teacher may wish to be accompanied by the Principal, a member of the Board of Trustees or the school's own lawyer.

17. A school counsellor may feel constrained by the ethics of counsellor/client confidentiality and this view should be respected.⁶ Care should be taken not to unwittingly compromise any professional relationship that may exist between a child and a school counsellor. The lawyer should be prepared to discuss with a school counsellor the existence of, and limits upon, client confidentiality.
18. Children may regard school as a place of relative security and stability and lawyer for the child should be sensitive to this, and take care not to compromise that security.

Information from schools - contact from parents, guardians and their lawyers

19. Schools may hold important information about a child that should be before the Court so that decisions can be made that are in the child's best interests.
20. Even when a lawyer for the child is appointed, at times, parents may seek information directly from the school or choose to call a teacher as a witness.
21. The appointment of a lawyer for the child does not affect the school's obligation to provide parents, or their representative, with information about their child.

Child's views

22. All children should be given the right to express their view freely in matters which affect them.⁷
23. The lawyer for the child should consider whether to consult with the child about the disclosure of any sensitive or controversial material bearing in mind the lawyer for the child's obligation under section 9B of the Family Courts Act 1980.

MEETING CHILDREN AT SCHOOL

General

24. The lawyer for the child may meet the child at school for the purpose of providing the child with information about the Court process. Meetings may also be held for the purpose of ascertaining the child's views in a neutral environment where the child is likely to feel comfortable.
25. Lawyer for the child may ask the school to agree to arrange a meeting between the child

⁶ Note section 69 of the Evidence Act 2006, as regards the court's ability to direct that confidential information not be disclosed if the Court decides that the public interest in disclosure does not override the public interest in preventing harm to the person the disclosure is about or the confidential relationship.

⁷ Care of Children Act 2004, section 6, United Nations Convention on the Rights of the Child, Article 12.

and lawyer for the child without reference to the parents.

26. It is not necessary for lawyer for the child to be chaperoned by a teacher or staff unless the school protocol requires this or lawyer for the child requests this as part of safe practice.
27. Lawyer for the child should:
 - (a) exercise caution before deciding to interview a child at school;
 - (b) ensure that the school's consent is obtained before any such interview is conducted; and
 - (c) consider obtaining the parents' and/or guardians' consent if possible.
28. If such a meeting does take place at school, lawyer for the child may want a teacher or someone else with whom the child is comfortable present for all or part of that meeting.

Follow up

29. Where lawyer for the child has involved the school in interviews, they should generally advise the school of the outcome of any proceeding as far as practicable and permissible. This may include advice of any special conditions in regard to the provision of school reports or other information to a parent, or contact arrangements which involve a child being collected from or after school.
30. If the Court has refused an application for contact or has ordered that any such contact be supervised, the school should be advised in writing and relevant staff advised of the terms of the order.

Urgent intervention

31. Occasionally the Family Court may issue a warrant to enforce day-to-day care or contact orders or custody orders under the Children, Young Persons, and Their Families Act 1989.
32. There may be (rare) occasions when that warrant needs to be executed at school so that the child is collected from the school.
33. In such circumstances lawyer for the child may be aware of the execution of the warrant and should liaise closely with the Principal to ensure minimum disruption to the school and the child.

This Guide was introduced by the Family Law Section of the New Zealand Law Society in August 2004. It was updated by the Family Law Section in November 2016 and ratified by the New Zealand Law Society Board in December 2016.

APPENDIX ONE

SECTION 6 OF THE PRIVACY ACT 1993

PRINCIPLE 11

Limits on disclosure of personal information

An agency that holds personal information shall not disclose the information to a person or body or agency unless the agency believes, on reasonable grounds:

- (a) That the disclosure of the information is one of the purposes in connection with which the information was obtained or is directly related to the purposes in connection with which the information was obtained; or
- (b) That the source of the information is a publicly available publication; or
- (c) That the disclosure is to the individual concerned; or
- (d) That the disclosure is authorised by the individual concerned; or
- (e) That non-compliance is necessary—
 - (i) To avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences; or
 - (ii) For the enforcement of a law imposing a pecuniary penalty; or
 - (iii) For the protection of the public revenue; or
 - (iv) For the conduct of proceedings before any court or [tribunal] (being proceedings that have been commenced or are reasonably in contemplation); or
- (f) That the disclosure of the information is necessary to prevent or lessen a serious and imminent threat to:
 - (i) Public health or public safety; or
 - (ii) The life or health of the individual concerned or another individual; or
- (g) That the disclosure of the information is necessary to facilitate the sale or other disposition of a business as a going concern; or
- (h) That the information:
 - (i) Is to be used in a form in which the individual concerned is not identified; or

- (ii) Is to be used for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual concerned; or
- (iii) That the disclosure of the information is in accordance with an authority granted under section 54 of this Act.



PRINCIPAL FAMILY COURT JUDGE'S CHAMBERS

FAMILY COURT PRACTICE NOTE
LAWYER FOR THE CHILD: SELECTION, APPOINTMENT AND OTHER MATTERS

1 BACKGROUND

- 1.1 The terms of this practice note have been settled in consultation with the Ministry of Justice (Ministry) and the Family Law Section (FLS) of the New Zealand Law Society (Law Society).

2 CONTENTS

- 2.1 The practice note covers the following matters:
- (a) Legislative provisions for the separate representation of children
 - (b) Process for appointment in any specific case
 - (c) Review procedures under the Oranga Tamariki Act 1989 – Children's and Young People's Well-being Act 1989
 - (d) Reports of lawyer for child
 - (e) Process and criteria for appointment to the lawyer for child list
 - (f) Obligation to disclose
 - (g) Continuing legal education, professional supervision and mentoring
 - (h) Review of lawyers on lawyer for child list
 - (i) Remuneration
 - (j) Complaints
 - (k) Removal or suspension from lawyer for child list

3 INTRODUCTION

- 3.1 This practice note replaces all previous practice notes pertaining to the selection, appointment and payment of lawyer for the child.

4 TERMS AND DEFINITIONS

- 4.1 In this practice note:
- (a) COCA means the Care of Children Act 2004;
 - (b) OT Act means the Oranga Tamariki Act 1989 – Children's and Young People's Well-being Act 1989;
 - (c) FCA means the Family Courts Act 1980;

- (d) The term 'child' includes child as defined in COCA and both 'child', 'children' and 'young person' as those terms are defined in the OT Act;
- (e) References to 'the lawyer,' unless otherwise stated, means a lawyer appointed by the Court to act for a child;
- (f) References to 'report writer' means any social worker or report writer from whom a report has been requested under section 132 or 133 of COCA or under section 178, 186 or 187 of the OT Act. 'Specialist report' has a corresponding meaning.
- (g) References to 'psychologist' means a psychologist as defined in section 2(1) of the OT Act 1989 who is also on the Ministry's list of approved psychologists.
- (h) Reference to 'cultural advisor' means a person whom the court considers qualified for the purpose of preparing a cultural report under section 133(1B)(a) of COCA.
- (i) The term 'FLS' means the Family Law Section of the New Zealand Law Society.
- (j) 'FLS Best Practice Guidelines' means the FLS Lawyer for the Child Best Practice Guidelines.

5 SEPARATE REPRESENTATION OF CHILDREN

5.1 Various family law statutes authorise the court to appoint a lawyer to act for a child who is the subject of, or who is a party to, proceedings under the relevant Act.

- (a) Sections 7(a) and (b) of COCA provides that the court may appoint a lawyer if the court has concerns for the safety and well-being of the child and considers an appointment necessary.
- (b) Sections 162(1)(a) and (b) of the Family Proceedings Act 1980 authorise the court to appoint a barrister or solicitor to represent any child who is the subject of, or who is otherwise a party to, any proceedings under that Act if the court is satisfied that the appointment is necessary or desirable.
- (c) Section 159 of the OT Act requires the court to appoint a barrister or solicitor to represent any child or young person who is the subject of any proceedings under Part 2 (Care and protection of children and young persons, including for a place of safety warrant) or Part 3A (Trans-Tasman transfer of protection orders and protection proceedings) of that Act and, if the court thinks desirable, for such other purposes as the court may specify (including any other proceedings under that Act or any other enactment).
- (d) Section 166(1)(b) of the Family Violence Act 2018 authorises the court to appoint a lawyer to represent the child in any proceedings on an application for a protection order made on the child's behalf or in any proceedings relating to or arising out of a protection order made on that child's behalf. Section 166(1)(c) of the Family Violence Act 2018 authorises the court to appoint a lawyer to represent the child in any proceedings on an application for a protection order made against a child or an application that a protection order be made against a child as an associated respondent, or in any proceedings relating to or arising out of a protection order made against that child.
- (e) Section 37A of the Property (Relationships) Act 1976 authorises the court to appoint a lawyer to represent children of the marriage, de facto relationship or civil union in any proceedings under that Act if there are special circumstances that render appointment necessary or desirable.

- (f) Sections 226(1)(a) and (b) of the Child Support Act 1991 authorise the court to appoint a barrister or solicitor to represent an applicant child who is the subject of, or who is otherwise a party to, any proceedings under that Act if the court is satisfied that the appointment is necessary or desirable.
- (g) Section 19 of the Marriage Act 1955 authorises the court to appoint a lawyer to represent an applicant child who applies to the court for a Family Court judge's consent to an intended marriage if the court is satisfied that the appointment is necessary or desirable.
- (h) Section 20 of the Civil Union Act 2004 authorises the court to appoint a lawyer to represent an applicant child who applies to the court for a Family Court judge's consent to an intended civil union if the court is satisfied that the appointment is necessary or desirable.

6 PROCESS FOR APPOINTMENT OF LAWYER FOR THE CHILD IN ANY SPECIFIC CASE

- 6.1
 - (a) Appointments must be made by the court of a lawyer from the lawyers on the lawyer for the child list.
 - (b) The judge is responsible for settling the brief for the lawyer.
 - (c) The brief will have regard to the issues raised by the specific proceedings and will otherwise require the lawyer to carry out his or her task as prescribed by section 9B of the Family Courts Act 1980.
- 6.2 When appointing a lawyer, the court will consider the match of the lawyer's skills and/or competence to the specific case requirements, namely the court must, so far as practicable, appoint a lawyer who is, by reason of personality, cultural background, training and experience, suitably qualified to represent the child. Other factors will be considered, including:
 - (a) Availability of the lawyer.
 - (b) Current workload of the lawyer.
 - (c) Equitable distribution of work among lawyers on the list.
- 6.3 Every appointment shall specify:
 - (a) A timeframe for reporting to the court; and
 - (b) The time and funding allocated to carry out the brief.
- 6.4 An invoice should be rendered in a format acceptable to the Ministry. This will be set out in 6 minute time units calculated in accordance with the allocated hourly rate of remuneration.
- 6.5 Where, during the course of the work, it becomes clear that the allocated time is insufficient to cover the work required the lawyer shall seek an extension. The lawyer should use best endeavours to report before the estimate is exceeded.
- 6.6 Where the lawyer believes a different payment level should apply, the lawyer should report to the court as soon as practicable. Where the lawyer and the registrar are unable to agree on the rate of remuneration and/or any additional cost, the file should be referred to the judge for direction.
- 6.7 When a final order has been made, the lawyer's appointment will continue:
 - (a) for 28 days in order to advise on the merits of an appeal (section 9B(d) of the Family Court Act 1980); and

(b) in COCA cases to comply with section 55(4).

6.8 The role of the lawyer is referred to in detail in the FLS Best Practice Guidelines.

7 ORANGA TAMARIKI ACT 1989: REVIEW PROCEDURES

7.1 The lawyer's appointment will continue after the initial proceedings have been finalised or have subsequently been reviewed, with a further review to follow.

7.2 The lawyer's appointment continues in this way, unless specifically directed otherwise by the court.

7.3 Because the appointment continues, the lawyer becomes a person who has to agree to the reviewed plan. Early consultation will be required by the person preparing the plan (refer to sections 132(1)(b) and 135(3)(e) of the OT Act).

7.4 The FLS Best Practice Guidelines set out in more detail the role of the lawyer in respect of OT Act reviews.

8 REPORT FROM LAWYER FOR CHILD

8.1 Reports, by way of memoranda, are to be provided as specified by the brief or as otherwise directed by a judge.

8.2 Copies of the reports must be forwarded to the lawyers for the parties or, if they are unrepresented, to the parties directly.

8.3 The report should summarise steps taken by the lawyer, highlight any relevant issues and outline further recommended steps to be taken.

8.4 Information on the content of reports from lawyer for child are included in the FLS Best Practice Guidelines.

9 PROCESS FOR APPOINTMENT TO THE LAWYER FOR CHILD LIST

9.1 In each court there will be a list of lawyers who are available to accept appointments from the court as lawyer for the child and from which the lawyer may be appointed in individual cases.

9.2 The appointment of a lawyer on the list of lawyers available to undertake Family Court appointments is a judicial appointment, with the judge being the chair of an appointment panel established in accordance with this paragraph.

9.3 The registrar shall give sufficient notice to the legal profession via the FLS that a panel will be convened to enable lawyers to apply for inclusion of the list.

9.4 The registrar will convene a panel to consider applications for inclusion on the list of lawyers for the child available to undertake Family Court appointments.

9.5 This panel must consist of a Family Court judge nominated by the regional liaison Family Court judge as chair, a manager or a family court co-ordinator, two nominees from the FLS, and a psychologist and cultural advisor where possible.

9.6 The registry must contact the FLS to confirm the FLS representatives to be included on the panel.

9.7 Panels will be convened no less than once a year, and more frequently if there are applications waiting to be considered and there is a need for lawyers to be appointed.

9.8 The following appointment process should be followed:

- (a) The lawyer must submit an application form to the registrar in the court region in which they wish to practise, nominating the particular court or courts where they wish to be on the list. The application is referred to a panel convened by the registrar.
- (b) The application must be in form PSFC L4C 1 which is available from the Family Court website or any Family Court. The application should be accompanied by any references or testimonials that the applicant would like the panel to consider and the names of other referees who can provide professional, confidential comment. The application should include the names of two senior lawyers for children who would be willing to mentor the applicant if the application for appointment to the list is successful.
- (c) The registrar shall give copies of the application and any supporting documentation to the liaison judge who shall be given seven days to make any comments in writing relating to the application.
- (d) Panel members may make such enquiries as may be needed for them to be informed about the applicant's ability to meet the criteria, including enquiries of referees.
- (e) The panel shall arrange an interview with the applicant at such time and place as may be determined by the registrar.
- (f) If there is a matter raised at the interview adverse to the applicant and the applicant requests an adjournment, that adjournment should be granted to enable the applicant to respond to any adverse matter raised.
- (g) The Family Court judge convening the panel authorises the appointment to the list. The role of a psychologist or a cultural advisor is to advise other members of the panel.
- (h) An unsuccessful applicant shall be provided with reasons for not being included in the list.
- (i) All successful applicants shall be mentored by a senior lawyer for child, appointed by the panel, for the first 12 months following an appointment to the list.
- (j) The registrar will advise of the appointment in writing to the following people: the applicant, the court, the FLS, the mentor and the national office of the Ministry.
- (j) The Ministry must maintain a national list of lawyers for children. Each registry shall hold the national list and the local list of lawyers in that region. The Ministry shall send the national list to the FLS and provide regular updates of the list as required.

9.9 The lawyer should meet the following criteria. They should have:

- (a) A current practising certificate;
- (b) The ability to exercise sound judgement and identify central issues;
- (c) A minimum of five years practice in the Family Court;
- (d) Proven experience in running defended cases in the Family Court;
- (e) A sound knowledge of COCA, OT Act, Family Violence Act 2018 and the Family Courts Rules 2002 and section 9B of the Family Court Act 1980.
- (f) An understanding of, and an ability to relate to and listen to, children of all ages;
- (g) Good people skills and an ability to relate to and listen to adults;
- (h) Knowledge of the impact of drug and alcohol abuse issues, the dynamics of family violence, child development, disabilities and mental health.

- (i) Understanding of tikanga Māori.
- (j) Sensitivity and awareness of different world views including gender, ethnicity, sexuality, cultural and religious issues for families;
- (k) Relevant qualifications, training and attendance at courses relevant to the role (including continuing professional development);
- (l) Personal qualities compatible with assisting negotiations in suitable cases and working co-operatively with other professionals;
- (m) Independence and strong advocacy;
- (n) Knowledge, understanding, and compliance with the FLS Best Practice Guidelines; and
- (o) A regulatory history compatible with the lawyer's suitability to act in the role of lawyer for the child.

9.10 The lawyer will be able to transfer their approval from one court region to another.

10 OBLIGATION TO DISCLOSE INFORMATION

10.1 A lawyer must immediately disclose to the Principal Family Court Judge and to the Law Society details of any criminal conviction, criminal charges or Police investigations of which they are the subject

10.2 If a lawyer makes a disclosure under para 10.1, a panel must be convened within five days if the Principal Family Court Judge considers that given the issues involved the matter requires a determination of whether a lawyer is to be urgently suspended from the list on an interim basis. If the Principal Family Court Judge considers that given the nature of the issues involved suspension should be considered but the matter does not justify urgency, a panel must be convened within four weeks to determine whether or not the lawyer should be suspended or removed from the list. If a lawyer is suspended on an interim basis the matter shall be reconsidered once it is reasonable to do so to consider whether the interim suspension should be lifted or made permanent.

10.3 The process set out in para 15 of this practice note shall be followed.

10.4 If any Law Society complaint is upheld against the lawyer or the lawyer is referred to the New Zealand Lawyers and Conveyancers Disciplinary Tribunal, the lawyer has an obligation to notify the liaison judge of the court where they receive appointments of that complaint and/or action.

11 CONTINUING LEGAL EDUCATION, PROFESSIONAL SUPERVISION AND MENTORING

11.1 The lawyer must undertake professional supervision appropriate to the nature and extent of their lawyer for child practice.

11.2 The lawyer must undertake a minimum of five hours of active lawyer for the child practice and a minimum of five hours of verified continuing professional development (CPD) in areas specific to practising as a lawyer for the child within each CPD year as specified in paragraph 15 of the FLS best practice guidelines.

- 11.3 All lawyers newly appointed to the list must be mentored by a senior lawyer for child for 12 months from when they receive their first appointment. The panel will confirm the mentor to the lawyer at the time of appointment.

12 REVIEW OF LAWYER FOR THE CHILD

- 12.1 A review of all lawyers on the lawyer for child list must be undertaken at intervals of not more than three years, or earlier if the need arises. The registrar in each court must ensure that approved lawyers are reviewed at such intervals. Where several courts use one pool of lawyers, the registrars in those courts may choose to review the approved lawyers together.
- 12.2 The registrar shall give notice of the triennial review to all lawyers who are currently on the list. Such notice will include a requirement for all lawyers whose names appear on the list to provide detail, within 28 days, on:
- (a) whether they wish to continue to receive lawyer for the child appointments;
 - (b) whether they wish to withdraw from the lawyer for the child list;
 - (c) any matters relating to present or past appointments which they wish to draw to the attention of the panel;
 - (d) relevant continuing professional education undertaken since the last review; and
 - (e) regular professional supervision undertaken since the last review.
- 12.3 The panel shall meet as soon as practicable after the 28 days' notice of the triennial review has expired and arrange an interview with a lawyer at such time and place as may be determined by the registrar. In the larger registries, the panel should convene on an annual basis to interview a third of the lawyers on the list each year and ensure at the end of a three-year period that all lawyers have been interviewed.
- 12.4 The panel shall assess each lawyer against the appointment criteria in para 9.9 of this practice note.
- 12.5 Lawyers should be prepared to answer any questions from the panel in terms of the information provided under para 12.2, the criteria in para 9.9 and in addition in terms of:
- (a) any insights learned from practising experience and ongoing professional legal education since appointment or the last review;
 - (b) personal attributes the lawyer possesses that make them suitable to undertake the role;
 - (c) skills used in the role to promote and encourage settlement of issues; and
 - (d) what proportion of his or her practice is made up of work as lawyer for child.
- 12.6 The panel shall also consider any matters raised by a lawyer during the course of the review that relate to the administration of the list.
- 12.7 A lawyer may be removed from the list at:
- (a) the lawyer's request;
 - (b) as a result of the lawyer's failure to respond within the stipulated time;
 - (c) as a result of a review by the panel of the lawyer's ongoing suitability for the role;
 - (d) if the judge has upheld a complaint against a lawyer; or
 - (e) under the provisions set out in para 15 of this practice note.

Following this, the panel shall reconstitute the list of lawyer for the child.

- 12.8 A lawyer may be retained on the list subject to conditions, such as supervision and/or mentoring by an experienced lawyer for child and/or further education or training relevant to the role of lawyer for child.
- 12.9 The panel shall notify all lawyers on the reviewed list whether their names have been retained on the list, including whether any conditions have been imposed, or removed from the list, including the reasons for removal.
- 12.10 The registrar shall send the revised list to the national office of the Ministry and the FLS.

13 REMUNERATION

- 13.1 Lawyers will be paid at one of the hourly rates agreed between the Law Society and the Ministry.
- 13.2 Lawyers will be paid at the higher rate where two or more case characteristics listed in the Courts Operation Circular 09/01 are present.

14 COMPLAINTS

- 14.1 Any complaints about the lawyer are to be made in writing to the Family Court registry where the proceedings are held.
- 14.2 If the proceedings have not been concluded the complaint is made to the presiding judge. If the proceedings have been concluded the complaint is made to the liaison judge responsible for the court where the proceedings were filed.
- 14.3 The lawyer who is the subject of the complaint will be sent a copy of the complaint to allow them to provide a written response for the judge to consider. The judge handling the complaint shall make a direction about any additional party who is to receive a copy of the complaint.
- 14.4 The judge considering the complaint shall:
 - (a) make such directions from time to time as the circumstances require;
 - (b) make such enquiries as he or she thinks fit;
 - (c) ensure disclosure is made to the lawyer complained about of all relevant material;
 - (d) set a timetable for the lawyer to respond to the complaint and for the complainant to respond to the lawyers reply;
 - (e) observe the rules of natural justice; and
 - (f) determine whether the complaint has substance or not.
- 14.5 If the judge determines the complaint does not have substance, he or she shall dismiss it.
- 14.6 If the complaint has substance, the judge may require the lawyer to do any or all of the following:
 - (a) formally apologise in writing to the complainant;
 - (b) undertake further training;
 - (c) complete up to six assignments under the supervision of a named experienced lawyer for child;

- (d) have a named experienced lawyer for child as mentor for a period of up to 12 months.
- 14.7 The judge may also, at his or her discretion, refer the complaint to the Law Society.
- 14.8 If the complaint raises a substantial issue which the judge considers is not able to be addressed as set out above, he or she shall refer the complaint to the panel.
- 14.9 The lawyer who is the subject of the complaint shall be notified of the outcome of the complaint by the registrar of the court or the panel as appropriate. The judge handling the complaint shall make a direction about any other party who is to be notified of the outcome of the complaint.
- 14.10 Nothing in this practice note limits the court's jurisdiction to do whatever it considers appropriate in the circumstances or otherwise limits the right of the Law Society or other statutory authority to consider any complaint about a lawyer.

15 REMOVAL OR SUSPENSION FROM THE LIST OF LAWYER FOR THE CHILD

- 15.1 A panel shall be convened on the referral of a complaint by a judge or a notification pursuant to para 10 of this practice note to consider whether or not a lawyer should be removed or suspended from the lawyer for child list.
- 15.2 In addition, a judge may also refer a matter to the panel for consideration where:
 - (a) a lawyer has repeatedly failed to abide by the FLS Best Practice Guidelines;
 - (b) there is a risk of harm or undue hardship to the child; or
 - (c) the court no longer has trust and confidence that the lawyer can effectively advocate for or represent the child's welfare and best interests.
- 15.3 The panel will comprise a Family Court judge, a Family Court manager and at least one nominee of the FLS.

Urgent interim suspension

- 15.4 In circumstances where the panel is considering an urgent interim suspension, the panel will issue a notice to the lawyer:
 - (a) advising that a panel will be convened within five working days to consider an interim suspension of the lawyer;
 - (b) specifying the reasons why the panel is considering an urgent interim suspension; and
 - (c) stating the right of the lawyer to make submissions or representations to the panel.
- 15.5 The lawyer shall be entitled to be represented at the panel's meeting and shall be given reasonable notice of the date, time and place of the meeting.

Suspension or removal from the list

- 15.6 The panel shall advise the lawyer in writing that it is convening to consider suspending or removing his or her name from the list.
- 15.7 The notice from the panel to the lawyer shall:
 - (a) specify the reasons why the panel is considering the suspension or removal of the lawyer from the list;
 - (b) state the right of the lawyer to make submissions or representations within 21 days from the date of service of the notice; and

- (c) set out the intention of the panel to consider suspending or removing the lawyer from the list after 21 days unless the lawyer indicates in writing that he or she opposes suspension or removal.
- 15.8 When the 21-day time period has expired, or sooner on receipt of a response from the lawyer, the panel shall meet to consider whether or not the lawyer should remain on the list. If the lawyer has indicated that he or she wishes to be heard opposing the suspension or removal, the date for this meeting shall be arranged in conjunction with the lawyer.
- 15.9 The lawyer shall be entitled to be represented and to call witnesses in support at any such meeting.

Decision of panel

- 15.10 The registrar shall advise the liaison judge, the lawyer, the relevant Family Court(s), the Law Society and the national office of the Ministry of the decision in writing.
- 15.11 If the lawyer is suspended or removed from the list, the written decision must include a direction for the registrar as to the reallocation of the lawyer's current lawyer for child files.
- 15.12 If the panel decides that suspension or removal from the list is not necessary, it may:
- (a) require the lawyer to do any or all of the actions referred to in para 14.6 of this practice note;
 - (b) make a direction on whether or not some or all of a lawyer's files are reallocated; and/or
 - (c) refer the matter to the Law Society for further consideration.
- 15.13 When considering whether or not to reallocate a lawyer's files, the panel must have regard to the:
- (a) nature of the allegation;
 - (b) status of any current proceedings;
 - (c) issues in question in any current proceedings;
 - (d) whether or not reallocation of any, some or all of the files is necessary; and
 - (e) whether or not it might be appropriate for the lawyer to continue to act on some/all files subject to the imposition of appropriate conditions such as supervision and/or not meeting alone with a child.
- 15.14 A lawyer may appeal any panel decision to the High Court by way of judicial review.

COMMENCEMENT DATE

This revised practice note comes into operation on 19/06/2020



Judge Jacquelyn Moran

PRINCIPAL FAMILY COURT JUDGE

Dated 19/06/2020

NZLS CLE Ltd

Family Law Conference papers

2011

Supervision for lawyers: how it might work (Peter Roe)

Sexual abuse – evidence and proof (Garry Collin and Rashi Gadekar)

Shared time parenting and relocation (Professor Mark Henaghan and Dr Jennifer McIntosh)

Children and adolescent brain development- the impact (Lope Ginnen and Dr Simon Rowley)

Getting the best out of psychological evidence (Trish Allen and Simon Jefferson QC)

Breaking the cycle – child protection and the front line (Dr Patrick Kelly)

Listening to children's voices: the art and science of translation (Dr Jennifer McIntosh and Dr Nicola Atwool)

2013

The voices of the vulnerable (Kate Diesfeld and Her Honour Judge Alayne Wills)

Cultural considerations for family lawyers (Rosaline Fuata'i, Sharyn Otene and Haamiora Raumati)

When children refuse contact (Vincent Papaleo)

2015

Vulnerable children – CYFs and a practitioner's perspective (Robert Bowe, Dr Allan Cooke and Hana Ellis)

The high conflict post-separation shared-time family (Dr Bruce Smyth)

Children's memory – implications of the Court (Professor Harlene Hayne)

Lawyer for child – has the landscape really changed? (Belinda Inglis and Jason Wren)

Family violence – a complex issue (Her Hon Judge Ida Malosi and Ruth Herbert)

Domestic violence in the new evidential environment (Judge Jill Moss and Stephen van Bohemen)

2017

Drugs and alcohol – what you need to know (Raewyn Crow and Lynda Manning)

Lawyer for child – know your role (Maurice Casey and Tracey Gunn)

High-conflict shared-time parenting after separation: recent insights (Dr Bruce Smyth and Dr Jan Pryor)

Responding to the perpetrators of family violence (Professor Devon Polaschek)

What to do with parental hatred? (Dr Bruce Smyth and Sarah Calvert, PhD)

2019

He taonga te tamariki – representing Māori in the Family Court (Ophir Cassidy and Corin Merrick)

Understanding intimate partner violence (Dr Ayesha Scott and Professor Bruce Smyth)

Kidz rule ok: children’s capacity for decision-making (Alison Douglass and Dr Fiona Miller)

Parenting with a mental disorder (Nigel Fairley and Dr Jacqueline Short)

Children’s participation in the family justice system : purpose and process (Deb Inder and Dr Fran Vertue)

Falling through the cracks: alternative perspectives on family violence (Erin Ebborn and Kiriana Tan)

NZLS CLE Ltd Advanced Lawyer for child one-day forums

2004 (March) – Child development

2008 (July) – Advanced lawyer for the child – the winds of change

2014 (November) - Lawyer for child intensive – meeting the challenge

2018 (May) - Advanced Lawyer for Child: out of the comfort zone

NZLS CLE Ltd lawyer for child webinars/ seminars

Webinars: Offered nationwide

- Interviewing child – the steps to success: July 2015.
- Vulnerable Witnesses – children: November 2015.
- Family Court Changes – applications: August 2020.
- Cultural Reports in the Family Court: April 2021.

Seminars/Intensives/Workshops:

2015:

- Lawyer for Child Workshop: One three day session Wellington: April
- Introduction to Family Law Advocacy & Practice: Three two day sessions Auckland/Wellington/Christchurch: June.
- Family Dispute Resolution – joint project with AMINZ. Three one day sessions Auckland/Wellington/Christchurch: August.

2016:

- Lawyer for Child Workshop: One three day session Wellington: March.

- Introduction to Family Law Advocacy & Practice: Three two day sessions Auckland/Wellington/Christchurch: November.

2017:

- Lawyer for Child Workshop: One three day session: March.
- Voice of the Child in Family Mediation. AMINZ with Resolution Institute and NZLS CLE. Three one day sessions Auckland/Wellington/Christchurch in June & July.

2018:

- Child Inclusion: A working with Children Intensive. Two Day workshop Wellington. NZLS CLE Ltd and AMINZ: March.

2019:

- Lawyer for Child Workshop: One three day session Wellington: March.
- Oranga Tamariki Act Changes Seminar. Three half day in person session in Christchurch/Wellington/Auckland June 2019.

2020:

- Lawyer for Child. One three day online session Wellington. July 2020.

FLS Lawyer for child one-day forums (with specialist presenters)

Dunedin (yearly since 2015 – 2020 deferred due to covid)

Hamilton (almost annually since 2001)

Hawkes Bay (2016)

Auckland (2021)

NZLS family violence webinars/seminars

Webinars: Offered nationwide

- Family Violence Legislation – phase one: February 2019.
- Family Violence Legislation – phase two: July 2019.

Seminars/Intensives/Workshops:

2020:

- Questioning Vulnerable People – best practice: One day online free forum sponsored by MoJ: June: *Offered nationwide*
- Questioning Vulnerable People – part 2 – Free Forum. One Day in-person session Auckland and live stream *Offered nationwide* sponsored by MoJ: November.

2021: To be held:

- Family Violence Dynamics: One day in-person session Wellington and live stream *Offered nationwide* sponsored by MoJ: May
- Child Witnesses: One day in-person session Auckland and live stream *Offered nationwide* sponsored by MoJ: June.
- Family Violence: One day in-person session and live stream sponsored by MoJ: October. To be confirmed.
- Sexual Violence Legislation Bill and opportunities for best practice techniques. One day in person session and live stream: November: To be confirmed.

13 December 2018

Russell Bates
Manager, Secretariat
Independent Panel on the 2014 Family Justice System Reforms
Ministry of Justice
Wellington

By email: russell.bates@justice.govt.nz

Dear Russell

Complaints made against lawyers for children

Thank you for your email of 11.12.18 requesting details of the numbers of complaints received by the New Zealand Law Society in respect of lawyers for children.

As discussed by telephone, the process for dealing with complaints about lawyers for children is contained in the Practice Note: *Lawyer for Child: Selection, Appointment and other matters*. Paragraph 12 sets out the complaints process and paragraph 13 sets out the process to follow if lawyers for children are removed from the list. Attached are the FLS best practice guideline, which are cited in the practice note.

The number of complaints received by the Law Society are set out below in terms of calendar years for 2012 to 2018. Also included is the total number of complaints the Law Society has received in respect of the whole legal profession.

	2012	2013	2014	2015	2016	2017	2018
All complaints received	1709	1757	1581	1560	1399	1408	1578
LFC complaints received	19	27	23	23	14	16	15
LFC complaints closed	12	37	21	26	14	13	12
LFC complaints dismissed	12	37	21	25	14	13	12
LFC complaints upheld	0	0	0	1	0	0	0
LFC complaints referred to Admin Judge	12	36	19	23	14	13	11
LFC complaints returned to NZLS				2			

Notes on the statistics

The complaints closed in a given year, may not be the same complaints that were opened in that year.

The complaints in 2012 were referred to the Family Court, kept open, and when the judge issued a report and/or minute, the complaint was then dealt with. Complaints in 2013 onwards were mainly referred to the Family Court, then closed.

In 2015, one complaint was upheld - a finding made of unsatisfactory conduct, a fine of \$1,000 imposed, costs of \$500, an apology ordered, a censure and compensation ordered.

In 2015, the two complaints returned to the Law Society from the Family Court were:

1. The judge made his comments then returned it to the standards committee to determine what sanctions should follow.
2. The judge withdrew the lawyer as lawyer for child but said if the complainant wanted the standards committee to consider the complaint further then that person could make a formal complaint to the Law Society.

I hope this information is helpful.

Please feel free to contact the FLS manager, Kath Moran by email kath.moran@lawsociety.org.nz or by phone 04 463 2996 if you have any questions or require further information.

Yours sincerely

A handwritten signature in blue ink that reads "M Ollivier". The signature is written in a cursive, flowing style.

Mary Ollivier
Acting Executive Director



FAMILY LAW SECTION NEW ZEALAND LAW SOCIETY

NZLS EST 1869

Lawyer for the child

Appointment of lawyer for the child

When there are proceedings in the Family Court that involve children, a lawyer for the child will often be appointed to represent a child or young person. This can be where:

- parents cannot agree who should have day-to-day care of, or contact with the child
- parents cannot agree on guardianship issues involving the child, for example, where the child should go to school
- where there are allegations of family violence or where family violence has occurred in the child's home
- where there are other care and protection issues affecting the child, for example, ill-treatment and/or abuse of the child

A judge decides whether a lawyer for child is appointed in each case.

The welfare and best interests of the child is the most important consideration of the Family Court in all proceedings that involve children.

Rights of children

The following guiding principles are relevant to the rights of children who are the subject of Family Court proceedings:

- a child has the right to be legally represented by an experienced and skilled lawyer
- a child must be given a reasonable opportunity to express his or her views
- the court must take into account any views expressed by a child
- a child has the right to information about the case in which he or she is involved, including information on the progress and outcome of that case

The role of a lawyer for child

The lawyer for the child's role is to:

- act for the child in the proceedings in a way that the lawyer considers is in the welfare and best interests of the child
- ensure that any views expressed by the child to the lawyer on matters affecting the child and relevant to the proceedings are communicated to the court
- assist the parties (usually the parents) to reach agreement on the matters in dispute if that is in the best interests of the child
- explain to the child any right of appeal against the judge's decision and any merits of appeal

This role is contained in section 9B of the Family Court Act 1980.

Each lawyer for child uses their professional expertise and judgement to undertake the role in a way that promotes the child's welfare and best interests.

The lawyer for the child files a report with the Family Court setting out the views expressed to the lawyer by the child. The child's views may not always accord with what a parent may think they might be. The report may make suggestions for how the matter might be resolved or progressed. It is up to the judge to decide what emphasis should be given to a child's views.

Meeting with the child

The lawyer must meet with the child *unless* there are exceptional circumstances *and* a judge directs that it is not appropriate for the lawyer to meet with the child.

In most cases, the lawyer for the child will meet with the child (sometimes more than once) without either parent being at the meeting and, if appropriate, seek the child's views on matters that are relevant to the court proceedings. The lawyer for the child might meet the child at their home, school, at the lawyer's office or some other place that the child is most comfortable with. The child does not have to talk to the lawyer but most children like being able to talk to someone about what is happening.

What the child says to their lawyer is confidential. The lawyer cannot tell anyone else what the child said if the child does not want them to, except if the lawyer finds out the child or someone else may be unsafe.

Talking to other people

Sometimes, the lawyer for the child might meet with the parents to discuss matters with them or talk to other people, for example, members of the wider family, whānau, teachers, police or social workers. Who the lawyer talks to will depend on the facts of the case.

Meeting with the judge

Sometimes the judge will meet with the child to hear their wishes and views about their future. Usually, the meeting will only involve the judge, a court official, the child and the lawyer.

Safety issues

The safety of children is of paramount concern to the Family Court. If safety issues arise or are alleged at any stage of the proceedings, there are various strategies the court may use including:

- conditions in parenting orders;
- notifying Oranga Tamariki or the Police so that any ongoing risk to the child can be investigated;
- requests to Oranga Tamariki for reports and involvement; and
- lawyer for child can themselves notify Oranga Tamariki and/or the Police if they have concerns about a child's safety.

The judge's decision

The judge decides what emphasis should be given to the child's views but must take the child's views into account when making the decision. Sometimes the judge will not follow what the child says they want if the judge does not consider that is in the child's welfare and best interests.

Training and qualifications of lawyer for child

Lawyers for children are specially qualified. They must complete a specialised course run by senior lawyers and psychologists which covers topics on family violence, cultural issues, child development and talking with children. There are a number of criteria that are taken into consideration before a lawyer is appointed to the ministry's lawyer for child list. Once lawyers are on this list, they are expected to undertake ongoing education to make sure they are up to date with the latest research and education.

How lawyer for the child is paid

The lawyer for the child's fees are paid by the government. When the case ends, the court must consider whether the parents should contribute to the cost. There is a presumption that parents will pay one third each but they can ask the court to excuse them from making a payment. Generally, any parent who is funded by legal aid will not need to pay. The fees are based on a rate significantly lower than that which the lawyer would charge on a private basis.

Problems involving lawyer for the child

Lawyers for children are subject to regulations by the Family Court and by the New Zealand Law Society. Any complaints about the lawyer for child are to be made in writing to the Family Court where the proceedings are held. The judge who is hearing the case will consider the complaint. Complaints are also able to be referred by the judge and the parties to the New Zealand Law Society's Lawyers Complaint Services.