

**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 their 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 themselves 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. These guidelines are not a source of legal powers, and any discretion will be subject to relevant statutory requirements.¹

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. This includes in reporting memoranda, and 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) and participate in any judicial and administrative proceedings affecting them, as provided for by section 5(g) and 6(2)(a) of CoCA, sections 5(1)(a) 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, and the lawyer must exercise judgement about whether it is appropriate for them to seek the views of the child about the possibility that a psychological report will be obtained²
 - (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 does not exercise any statutory power of decision. It is the role of the court to make decisions in respect of the facts and law in any proceeding.³
- 5.3 The lawyer must explain to the child that any views expressed to the lawyer by the child that are relevant to the proceedings will be communicated to the court.

² *Newton v Family Court at Auckland* [2022] NZCA 207, at [237].

³ *Newton* (above), at [278].

- 5.4 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, OT) and if such disclosure is made, the lawyer is to explain to the child why this is necessary.
- 5.5 The lawyer must exercise professional judgement about what is relevant, appropriate and in the best interests of the child to include in reporting memoranda.
- 5.6 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.
- 5.7 The lawyer has a duty to ensure that all factors relevant to the child's welfare and best interests are before the court.
- 5.8 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.
- 5.9 The lawyer must be aware of, and actively manage, the risk of the child being exposed to systems abuse.⁴

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).
 - (d) Making any applications that are considered necessary in the welfare and best interests of the child.⁵
 - (e) Consenting to the disclosure of a protected communication by a registered medical practitioner or a clinical psychologist on behalf of their client child.⁶
 - (f) Considering and responding to as appropriate the review of a plan on behalf of a child.⁷

⁴ Systems abuse is defined as the over exposure of children to multiple interviews by professionals.

⁵ 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).

⁶ Oranga Tamariki Act 1989, section 196.

⁷ Oranga Tamariki Act 1989, sections 132(1)(b) and s 135(3)(e).

- 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 reporting memorandum on their views and best interests. In arranging and planning to meet with the child, the lawyer shall ensure that such arrangements reflect the fundamental importance of mana tamaiti (tamariki), whakapapa and whanaungatanga; and the express duty on the chief executive of OT to recognise and provide a practical commitment to the principles of Te Tiriti of Waitangi.⁸
- 6.5 The lawyer may decide to also meet with the caregivers, parents, guardians or any other person in preparation for filing any reporting memorandum to the court. The lawyer should, however, obtain the consent (where applicable) of any service provider approved under section 396 of the OT Act and who provides or facilitates caregiving for the child, before making contact with the child's caregivers.⁹
- 6.6 If the lawyer has concerns about the OT plan/report or does not agree with any aspect of the OT plan/report, they should discuss this with counsel for OT so that their position can be considered and possibly included (or altered) before the lawyer's reporting memorandum is filed. It is not the lawyer's role to assess the suitability of placements.¹⁰
- 6.7 The judge should be advised of any dispute about the OT plan/report.

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 by way of memorandum 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; and
 - (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.
- 7.5 Subject to the provision at paragraph 6.4 above, 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.

⁸ Waitomo (above), at [94].

⁹ Waitomo (above), at [139](c)(iii).

¹⁰ Waitomo (above), at [123](d).

7.6 When meeting with the child the lawyer shall:

- (a) explain the nature of the proceedings to the child in a manner that the child is most likely to understand (section 7AA of CoCA);
- (b) 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);
- (c) 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;
- (d) consider an appropriate process for disclosure of information the child would prefer to remain confidential; and
- (e) 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 MEMORANDA

- 11.1 The lawyer will file reporting memoranda to the court from time to time. These memoranda should be based on their meetings with the child and documents filed with the court and avoid unnecessarily introducing evidence. As legislation does not confer a power or right on the lawyer to prepare a report, such memoranda are simply submissions on behalf of the lawyer which may address questions of fact and questions of law.¹¹
- 11.2 Whilst the lawyer has no special statutory power to carry out enquiries, to make an investigation or to compel a response to enquiries¹², reporting memoranda 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.
- 11.10 The lawyer is not exercising any statutory or public power and their memoranda does not attract any special weight in the hearing by the court.¹³

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

¹¹ *Newton* (above), at [276].

¹² *Newton* (above), at [277] and [280].

¹³ *Newton* (above), at [281] and [283].

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.

Lauren Pegg
Chair
Family Law Section

Ratified by the New Zealand Law Society Board on 29 April 2024

APPENDIX ONE

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".

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 and Training Act 2020; and
 - the Privacy Act 2020.
- Principle 11 of the Privacy Act 2020 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 Court 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

- 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; and
 - there are shared understandings about the role of each party.

General – lawyers appointed by the Family Court

- 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.
- 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 Oranga Tamariki, under the Oranga Tamariki Act 1989.

- 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
- 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

- Some schools have their own protocols or guidelines for dealing with lawyers who request information about pupils.
- 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

- Official information is general information held by government agencies including schools. Other information will generally be provided by the Principal on request.
- 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 2020

- Principle 11 of the Privacy Act 2020 prescribes the limits on disclosure of personal information. Disclosure by the school in terms of the Privacy Act 2020 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
 - b. schools may be requested to make disclosure to a public sector agency acting under a specified statutory authority (e.g. Police, Ministry of Social Development, Work and Income New Zealand).
 - c. disclosure is deemed as necessary for the conduct of proceedings before any court.⁴
- The Privacy Act 2020 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
- 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.

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 2020, Principle 11(a).

⁴ Privacy Act 2020, (Principle 11(1)(e)(iv)).

⁵ Privacy Act 2020, section 49(1)(c).

Information from schools - contact from lawyer for the child

- 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 Oranga Tamariki 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; and
 - (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.
 - 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) If 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

- Lawyer for the child has no greater rights to information than may be conferred by the Official Information Act 1982 or the Privacy Act 2020.
- If the school raises safety concerns about the child, the school should immediately make a report of concern to Oranga Tamariki if appropriate.
- 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.
- 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.
- 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

- 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.
- 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.
- 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

- All children should be given the right to express their view freely in matters which affect them.⁷
- 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.

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.

MEETING CHILDREN AT SCHOOL

General

- 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.
- Lawyer for the child may ask the school to agree to arrange a meeting between the child and lawyer for the child without reference to the parents.
- 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.
- 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.
- 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

- 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.
- 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

- Occasionally the Family Court may issue a warrant to enforce day-to-day care or contact orders or custody orders under the Oranga Tamariki Act 1989.
- There may be (rare) occasions when that warrant needs to be executed at school so that the child is collected from the school.
- 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.

APPENDIX TWO

SECTION 22 OF PRIVACY ACT 2020

Information privacy principle 11

Limits on disclosure of personal information

- 1 An agency that holds personal information must not disclose the information to any other agency or to any person 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 disclosure is to the individual concerned; or
 - (c) that the disclosure is authorised by the individual concerned; or
 - (d) that the source of the information is a publicly available publication and that, in the circumstances of the case, it would not be unfair or unreasonable to disclose the information; or
 - (e) that the disclosure of the information is necessary—
 - (i) to avoid prejudice to the maintenance of the law by any public sector agency, including prejudice to the prevention, detection, investigation, prosecution, and punishment of offences; or
 - (ii) for the enforcement of a law that imposes a pecuniary penalty; or
 - (iii) for the protection of 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 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 enable an intelligence and security agency to perform any of its functions; 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
- (i) that the disclosure of the information is necessary to facilitate the sale or other disposition of a business as a going concern.

2 This IPP is subject to IPP 12.