



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.