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Tēnā koe

For our Auckland members, our thoughts are with you. We know that many of you are struggling at this time, and worried about how you will cope with the inevitable onslaught of cases that is expected when the alert levels in Auckland go down.

We are continuing to actively work with the judiciary and ministry to try to help smooth out some of the operational matters for your current and future workloads. Our representations have resulted in some of the changes reflected in the updated level 2 [protocol](#). Please ensure that you ask the court to provide some leniency if timetabling or scheduling directions are so onerous that you would struggle to discharge your duty to the court or to your clients. The court will consider your representations and the judiciary have been made aware of the negative impact this lockdown is having on the wellbeing of Auckland family lawyers.

### **Our Auckland colleagues**

We are disappointed to hear from our Auckland colleagues about the lack of empathy being shown by other family lawyers around the country when dealing with them over cases. We ask that members be kind and empathetic and remember how difficult it is for our Auckland colleagues currently. Many are struggling with the extended level 4 lockdown and some sense that there is a lack of appreciation from others around the country. If you know of colleagues in Auckland, please try to support them in any way you can. A friendly email asking how they are might be a nice gesture.

### **Contact us about issues**

Please contact us if we can help you in any way. I meet weekly with a group established, including the judiciary so we can escalate issues for resolution if they cannot be resolved directly with the Ministry of Justice. Members have been getting in touch with us and

advising of their concerns. They have been encouraged to know that the FLS is aware of issues pertaining to practice, particularly in Auckland, and raising them so they can be resolved where possible.

### **Updated guidance – shared parenting arrangements**

Click [here](#) for the updated guidance on shared care issued by the Principal Family Court Judge. The main change to these guidelines is to remove references to homes across different alert levels. The message remains that decisions need to be made in the best interests of the children and with the safety of all being prioritised. Please familiarise yourselves with these guidelines.

### **Are you interested in post-separation parenting apps? Can you help by participating in a short web survey?**

Professor Bruce Smyth (Australian National University) and his colleagues are currently investigating which co-parenting smartphone apps (or app features) can benefit separated families. These apps are designed to help separated parents manage their post-separation parenting arrangements, and typically comprise a communication tool, expense tracker and shared calendar. The research team would like to hear from NZ family law professionals (judges, FDRPs, mediators, lawyers, mental health specialists etc) with or without any experience with post-separation parenting apps. Participation in this project is voluntary. The web-survey is anonymous and takes about 10 to 12 minutes to complete. If you are willing to participate please click [here](#). Many thanks on behalf of Bruce and the research team.

### **Section 95 Evidence Act (Counsel to assist in family violence cases)**

For some time, there has been a debate waging about the role of counsel in these cases, and members should be aware of a recent decision of the High Court, [Irving v Irving \[2021\] NZHC 2269](#), a decision of the High Court following a case stated by Judge Parsons from the Family Court about the role of counsel to assist appointed pursuant to section 95 of the Evidence Act 2006. The High Court concludes that the Family Court has jurisdiction to make such appointments. The court held that while the role of a person appointed pursuant to section 95(5) is limited to putting the unrepresented party's questions, there is nothing in section 95(5) that precludes the unrepresented party from conferring with court appointed counsel during the course of cross-examination, to update add or modify the questions to be asked [para 54]. However, counsel is not required to conduct their own cross-examination of the vulnerable witness to ensure compliance with the cross-examination duties in section 92 of the Evidence Act as it is the unrepresented party who must comply with those duties [para 55 and 56].

## **Te wiki o te reo Māori**

Māori language week runs through to 19 September. We remind you of our wero for all family lawyers to try to use te reo Māori to introduce themselves in court this week (and perhaps from now on). Our kōanga (spring) edition of the [Family Advocate](#) has a useful article “Te Reo in the court and at the office.” You will need your lawyer ID and password to access the Advocate in the members’ area of the FLS website. The handy office textbook, *Kia kākano rua te ture* (by Alana Thomas and Corin Merrick and reviewed in the same edition of Advocate) is also an invaluable resource for this week and beyond. Karawhuia! Kia kaha te reo Māori!

Noho ora mai

Caroline Hickman  
FLS Chair

Family Law Section, New Zealand Law Society, 17 Whitmore Street, PO Box 5041, Wellington 6145, DX SP20202 Phone: 04 472 7837 Fax: 04 463 2983

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