

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.