

GUIDE FOR SCHOOLS WORKING WITH COUNSEL APPOINTED BY THE FAMILY COURT TO REPRESENT CHILDREN

INTRODUCTION

The Guide

1. This guide has been prepared by the Family Law Section (the Section), of the New Zealand Law Society. It is intended to assist schools who are approached by lawyers appointed by the Family Court to represent a child or children at the school. Such lawyers are known as 'Counsel for the Child'.
2. The guide has been written in an effort to ensure that the lawyers contact with the school staff and the child is not disruptive or disturbing for anyone involved.
3. The Section has also written a guide for Counsel for the Child to refer to when dealing with schools. In addition to this lawyers are required to adhere to the *Counsel for Child Code of Practice* issued by the Principal Family Court Judge P D Mahony (effective from 1.2.01), which includes guidance on dealing with schools. Relevant legislation in such cases includes the Privacy Act 1993, the Official Information Act 1982 and the Education Act 1989.
4. The guide has been endorsed by the Principal Family Court Judge Peter Boshier.

General

5. Not all lawyers are eligible to be Counsel for the Child. Only lawyers who satisfy strict criteria set down by the Principal Family Court Judge, will be appointed. The criteria are based on experience and suitability for the role.
6. In almost all proceedings involving the care and welfare of a child Counsel for the Child is appointed by the Family Court. Proceedings that involve children include applications for custody and access orders, proceedings under the Guardianship Act 1968 (which includes, for example, issues such as relocation, medical matters, religion and choice of school), and care and protection cases taken by Child Youth and Family Services (CYFS), under the Children, Young Persons and Their Families Act 1989.
7. The lawyer is an advocate for the child and must ensure that all the relevant information is placed before the Court, including the child's wishes. In carrying out his or her duties, the

child's lawyer may need to contact, or even visit, the child's school to obtain information about the child and his or her progress at school.

8. In proceedings involving children, the child's welfare is the first and paramount consideration of the Family Court.

School Protocols

9. Many 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.

General Disclosure Principles

10. The statutory parameters within which most schools operate in relation to the disclosure of information about a pupil to a lawyer appointed to represent a child are found in the Official Information Act 1982, Education Act 1989 and the Privacy Act 1993.
11. A request for information pursuant to Principle 6 of the Privacy Act may only be made by the individual concerned or by a duly authorised agent of that person. A lawyer appointed to represent a child by the Family Court is probably not an "agent" in terms of the Privacy Act unless expressly authorised by the individual pupil. If a lawyer has this written authorisation then the information requested must be provided in accordance with Principle 6 of the Privacy Act. All other requests for information must be dealt with in accordance with the Official Information Act, except where the request is to a private school.
12. Private schools must apply the principles of the Privacy Act.
13. Requests to state schools come under the Official Information Act (as opposed to the Privacy Act), which requires that information be released unless there is good reason to withhold it. The Act does allow information to be withheld if it is considered necessary to do so in order to protect a person's privacy. However, in most situations where a request has been made by a Counsel for the Child, it would be in the student's interests to release the information as requested and there would be no necessity to withhold information to protect the student's privacy.
14. Where the Privacy Act applies it is important to note Principle 11 of the Act which prescribes the limits on disclosure of personal information. Unfortunately this is often misunderstood. Many people (erroneously) believe that information about the child can only be disclosed with the consent of the child and only to the child. In fact Principle 11 permits much wider disclosure than that. (A copy of Principle 11 is attached).
15. Of particular relevance are the following situations when disclosure by the school in terms of the Privacy Act is permitted:
 - When the disclosure of the information is one of the purposes in connection with which the information was obtained or directly related to such purposes.
 - Schools may be requested to make disclosure to a public sector agency acting under a specified statutory authority (e.g. Police, CYFS, WINZ)

- When disclosure is deemed as necessary for the conduct of proceedings before any court.
16. The Official Information Act 1982 has, as its underlying principle, that information should be made available unless there is good reason to withhold it. A good reason may be where non-disclosure is considered necessary to protect a person's privacy.
 17. The Privacy Act 1993 sets out reasons for which a request for information may be refused, e.g. In the case of an individual under the age of 16, the disclosure of that information would be contrary to that individual's interests.
 18. 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.

OBTAINING INFORMATION FROM THE SCHOOL

Contact

19. Schools should expect the lawyer to make the initial contact with the school Principal in writing. Thereafter any contact with teachers and counsellors etc should be arranged through the Principal.
20. Schools should expect to receive, with the first letter, evidence of the lawyer's appointment as Counsel for the Child (the letter of appointment from the court would be sufficient), and enough information to enable the school to corroborate with the Court the fact of the appointment. The lawyer should provide proof of their identity, their appointment and details of the information they are seeking. A lawyer appointed to represent a child has no greater rights to information than may be conferred by the Official Information Act 1982 or the Privacy Act 1993.

Parents, Guardians and their lawyers

21. Schools are equally likely to be contacted by the parents, guardians or their lawyers. Subject to the school's other statutory obligations it may be preferable for the school to channel all information through Counsel for the Child. This will ensure that the child's rights are protected to the best possible extent and will reduce the possibility of the school, and in particular teachers and counsellors, being put in the position of having to take sides.
22. Consent from the parents or guardians for the disclosure of information by a school to Counsel for the Child is not a legal pre-requisite but lawyers will often seek the parents/guardians consent anyway as a matter of courtesy.
23. It is desirable that each parent and/or guardian be encouraged to notify the school that their consent has been sought and obtained if this is so. Where consent is not forthcoming the lawyer may nevertheless pursue a request for disclosure of information from the school.

The Child

24. The child's consent is not a legal pre-requisite in order for the school to release information. However lawyers will sometimes seek a child's consent depending on the child's age and maturity.

The Information Obtained from the School

25. No legal privilege or confidentiality will attach to any information supplied by the school to the lawyer. The information you provide may become known to all those involved in the proceedings. Except where required by law, children's disclosures to school counsellors should be treated as absolutely confidential and not disclosed without the consent of the children where the children are of an age and stage of maturity to provide consent.
26. It is possible that school staff may be required to give evidence, and be subject to cross examination, in the event of a Court hearing. Where a request to give evidence is received it would be prudent for a school to obtain independent legal advice on the ramifications of such a request. Other parties such as the lawyer for the parent(s) are entitled to request information and seek interviews with teachers, counsellors or other staff if they feel it is appropriate.
27. Individual teachers and or guidance counsellors who are interviewed by the lawyer may be accompanied by the Principal, a member of the Board of Trustees or the school's own lawyer. The school should ensure notes of the interview are taken and that the staff member being interviewed reads them and confirms that they accurately record the information given.
28. The Section acknowledges that the school, and staff will continue to have an ongoing relationship with the child and the child's parents/guardians/caregivers once any legal proceedings are resolved. For this reason the Section strongly suggests that staff frame the information disclosed in non-judgmental and neutral terms and avoid proffering views and opinions outside the range of the writer's demonstrable expertise as a teacher or counsellor.
29. The lawyer should be willing to explain and outline the legal terms and concepts that arise in the particular case and generally. However schools should of course refer to their own legal representatives in the event of there being any doubts as to their responsibilities.

MEETING CHILDREN AT SCHOOL

General

30. The lawyer may want to meet with the child at school. The purpose of that meeting may be to provide the child with information about the Court process; it may also be to obtain information relevant to the assessment of the child's wishes. On rare occasions the lawyer may make contact with the school without reference to the parents if, for example, he or she is concerned that the parent(s) might coach, upset, or otherwise influence the child prior to the lawyer making contact with the school.
31. The Counsel for the Child Code of Practice says:

"7. Interviewing the Child at School

7.1 *Counsel should exercise caution before deciding to interview children at school. The school's consent is required before any such interview is conducted.*

7.2 *If counsel is to interview the child at school it is desirable to obtain the prior consent of the parents and to notify the school of these consents. If consents are not forthcoming counsel may need to seek a direction from the Court. Counsel must also comply with any protocols or requirements of the school. If a formal Order or letter appointing counsel is available this should be shown to the school principal."*

32. If such a meeting does take place at school the lawyer may want a teacher or someone else with whom the child is comfortable present at least for the initial part of that meeting.

Follow Up

33. Where the lawyer has involved the school in interviews and the like, he or she will generally, as a courtesy, advise the school, so far as is practicable and desirable, of the outcome of any proceeding. This would include advice of any special conditions which might affect the right of one or other parent to information about their children, or to visit the school.

34. In the event of any dispute or the if the need for any clarification arises the school should initially contact the lawyer.

Urgent Intervention

35. Sometimes the Family Court may issue a warrant to enforce custody and/or access orders or under the Children, Young Persons and their Families Act 1989. There may be (rare) occasions when the execution of that warrant needs to take place at school i.e. the child may be collected from the school. In such circumstances the child's lawyer is likely to be involved in the execution of the warrant and the school should expect the lawyer to liaise closely with the Principal to ensure a minimum of disruption to the school and to the child.

This Guide was introduced by the Family Law Section in August 2004.

David Burns
Chair

ANNEX

THE PRIVACY ACT 1993, SECTION 6

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.