

## C Child, Youth & Family (CYFS)

If a Social Worker or the Police have concerns about a child's safety and welfare, a Family Court Judge can make a Declaration that a child is in need of care and protection under the Child, Young Persons and their Families Act 1989. In urgent cases a child will be removed from their parents/guardians care and placed in the Ministry of Social Development's custody. In other cases, the child will remain with their existing parents/guardian while the child's safety is investigated.

If you have concerns that a child is being or may be neglected/harmed contact CYFS or the Police so they can investigate. If CYFS have become involved in your family's situation contact us to discuss the situation and the most appropriate next step.

## D Domestic Violence

### 1 What is domestic violence?

Domestic Violence is physical, sexual or psychological abuse.

### 2 What is a Protection Order?

A Protection Order is an order of the Family Court that prevents the other party (the Respondent) from using domestic violence against the person who applied for the order (the Applicant). If the Applicant agrees to live with the Respondent, the non-contact provisions are suspended. The non-violence conditions continue. If the agreement to live together is withdrawn then the non-contact provisions take effect again without the need to make a further application to the Family Court.

### 3 Who can apply for a Protection Order?

Victims of domestic violence can apply to the Family Court for a Protection Order as long as they can establish that they are in a "domestic relationship" with the Respondent. This includes married couples, unmarried couples, gay and lesbian couples, family, people who share accommodation or anyone in a close personal relationship.

### 4 What if there are children involved?

Protection Orders automatically extend to cover the children. When there are allegations of violence, the Family Court will not allow the violent person to have the day to day care of a child or unsupervised contact with the child unless the Family Court is satisfied that the child will be safe.

### 5 What are Urgent Applications?

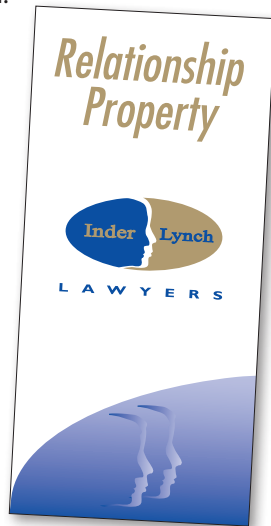
Where the Court is satisfied that delay in granting a Protection Order would cause risk or undue hardship, the application can be made without notice. This means the Court can make the Protection Order upon receiving the application by the Applicant, without the Respondent first being told that the application has been made. If the Protection Order is made on that basis, the Respondent will be served with the order and the application after the Protection Order has been made. They can then challenge the order.

### 6 What do you do if you are served with a Protection Order?

Whether you are served with a Protection Order or an Application for a protection order, there are strict time limits for filing a response in the Family Court. We recommend that you contact us immediately to obtain advice and protect your position.

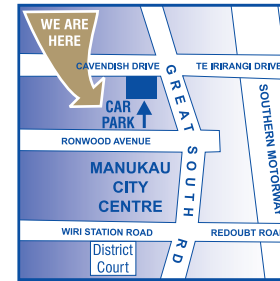
**Important facts about Relationship Property**

**Contact us for a copy of our FREE brochure**

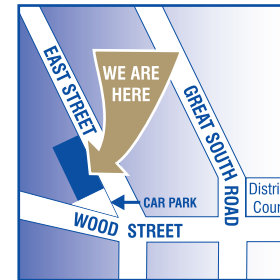


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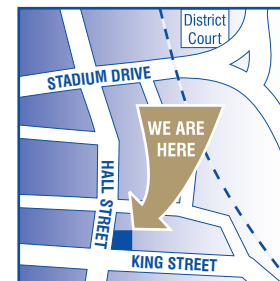
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# Family Law



# Important facts about Family Law

## A Parenting

### 1 What is guardianship, day to day care and contact?

These are all legal terms contained in the Care of Children Act 2004. They describe the various legal relationships between a parent and child

#### 1. Guardianship

Guardianship is the right to have a say in the major decisions affecting a child's upbringing. Some examples of guardianship issues include education, medical treatment if it is not routine in nature, religion and the child's name. Whether both parents are guardians will depend on whether they were in a de facto relationship or married at any time during the period from conception to birth. A father can also become a guardian if he is not living with the mother but is listed on the Birth Certificate or upon application to the Family Court. Guardianship rights remain the same after the parents are no longer living together. If guardians cannot agree on guardianship issues, they can obtain assistance through the Family Justice System and if necessary apply to the Family Court to determine the matter.

#### 2. Day to Day Care

This is the right to have the day to day care of a child. It may be shared with the other parent. If parents cannot agree on whose day to day care the child should be in, they can obtain assistance through the Family Justice System and if necessary apply to the Family Court to determine the matter. The Court can make a Parenting Order specifying who will have the day to day care and whether it will be shared.

#### 3. Contact

Contact is the child's right to spend time with the parent who does not have the day to day care. As with day to

day care, parents can obtain assistance through the Family Justice System and if necessary apply to the Family Court to determine contact issues. If it is appropriate a Parenting Order can attach conditions to contact such as requiring supervision or limiting the frequency and duration of the contact.

### 2 Can children be removed from New Zealand or Auckland without the other parent's permission?

Generally one parent is not allowed to remove the child from the city in which they live or New Zealand without the consent of the other parent. If you have concerns that your children may be removed without your knowledge or consent, it is possible to apply to the Family Court on an urgent basis for appropriate orders to prevent the children being removed from the city, or New Zealand.

### 3 What is child support?

Child support is paid by parents who do not live with their children. It is paid to the parent with the primary day to day care of the child to help support the child. Child support can be paid in a number of ways:

1. To the Inland Revenue Department who administer the Child Support Act 1991, There is a formula, based on your gross income and the number of children to calculate the payment due.
2. You may reach a private child support arrangement which is then registered with the Inland Revenue Department who administer the agreement and collect the payment.
3. The parents can come to a private arrangement between themselves which is not registered with the Inland Revenue Department but may be recorded in writing.

### 4 What is spousal maintenance?

It is possible, after separation, and in some circumstances after a dissolution, for one spouse to apply for maintenance from the other spouse. To succeed in an application for maintenance, the Applicant has to be able to show that the maintenance is necessary to meet their reasonable needs. Maintenance is only payable in certain circumstances and advice should be sought if you wish to make an application for spousal maintenance. Applications for spousal maintenance are made to the Family Court.

### 5 What is the role of the Family Court?

The Family Court aims to assist parents (and certain other people) to make guardianship and parenting decisions that achieve the best outcomes for your children.

Before you file applications in the Family Court, in most Care of Children Act cases it is mandatory to first complete a Parenting Information Programme and Family Dispute Resolution;

#### 1. Parenting Information Programme

Parenting Through Separation (PTS) is a free Parenting Information Programme (PIP) for parents to attend. This programme is provided and funded by the Ministry of Justice to assist parents that have separated in reaching decisions for their children that are best for them.

#### 2. Family Dispute Resolution (FDR)

Family Dispute Resolution is a mediation process that gives parents an opportunity to discuss parenting and guardianship matters with the assistance of a Family Dispute Resolution Provider. In most cases, FDR is compulsory before making an application in the Family Court. The FDR process is designed to allow parties to attend FDR without a lawyer, however both parties are entitled to have legal representation at their own cost. The FDR Provider has no power to make a decision for you, but they can record any Agreement you reach in order for this to be made into a binding Family Court Order. Whether FDR is successful or not, the FDR Provider will complete and sign an FDR form for you.

#### 3. Urgent Cases

In urgent cases and in other limited circumstances, parties will be exempt from completing a PIP and FDR before making an application to the Family Court.

If your case is urgent, or you are unsure whether you have to complete a PIP and FDR first, we encourage you to discuss this with us promptly.

#### 4. Court Applications

If no agreement is reached at FDR then you may apply to the Family Court for orders. You will need to provide a signed FDR form and evidence you have completed a PIP with your application. Lawyers can assist you to prepare the application and give you advice, but are not able to represent you in Court at all stages of the process.

#### 5. Lawyer for Child

Where children are involved, the Court may appoint a lawyer to act for the child in the Court proceedings. That lawyer is expected to meet with the child. Under the Care of Children Act, the child must be given a reasonable opportunity to express their views and those views must be taken into account by the Court in reaching its decision. The costs of a Lawyer for Child are met equally by the parties and the Court.

## B Adoption

An Adoption Order will be made by the Family Court if it considers the order will serve the welfare and interests of the child. Adoption is different from day to day care or guardianship as it severs the biological family links and creates new ones with the adoptive parents.

Child Youth & Family Services (Ministry of Social Development) are also involved in the process and will file a report with the Court to advise whether they support the adoption or not.

Whether you are a biological parent or you are considering adopting a child (from New Zealand or overseas) it is important you understand the rights and responsibilities adoption involves.