**PARTICIPATION OF CHILDREN AND YOUNG PERSONS WITHIN NEW ZEALAND FAMILY COURTS**

* **National Judicial College of Australia – 7 February 2015**

**Judge Peter Callinicos**

|  |  |
| --- | --- |
| **CONTENTS****New Zealand – The Basics****The Statutory Framework**Introduction* *Two Principal Statutes*
* *The Increasing Opportunity for Child Participation*
* *Differing Definitions of “Child”*

**Statutory Opportunities to be Heard*** *Introduction*
* *The Care of Children Act 2004*
* *Development of Express Safety Assessment*
* *Care of Children Act Reforms – March 2014 – “Diet COCA”*
* *Current COCA Provisions as to Child’s Voice*
* *Children Young Persons and Their Families Act 1989*
* *Family Courts Act 1980*
* *Domestic Violence Act 1995*
* *The Family Proceedings Act*

**Case Law*** *Should the Judge Meet a Child?*
* *Rationale for Meeting a Child*

**Judicial Development of Child Interviews*** *Judicial Competence*
* *Stress for the Child*
* *Natural Justice Rights of Parties*
* *What Should a Protocol Include?*

**Recent Research on Judicial Interviews*** *Introduction*

**Personal Observations and Thoughts*** *Introduction*
* *A Cautionary Tale*
* *Interview or Meeting?*
* *Request to Meet*
* *Respect Child’s Degree of Dialogue*
* *Introductions*
* *What Does Child Know About the Case*
* *What is Purpose of the Meeting?*
* *Does Child have any Questions*
* *Sibling Groups*
* *The Pressure of Time*
* *Ideal World*
 | **Page**3444556667910121314151616171919192021232330303032323333333434343435 |

**New Zealand – The Basics**

To assist in understanding aspects of this paper and the environment in which the New Zealand Family Court operates, it may be helpful to have an appreciation of the New Zealand context.

New Zealand has a population of approximately 4.5 million people, versus some 24 million in Australia. Our population is contained within an area a little larger than the State of Victoria.

We have no Federal and State systems of Government, instead operating primarily under the one source of central Government legislation.

There are four levels of Court in New Zealand. The originating Court is the District Court, of which the Family Court[[1]](#footnote-1) and Youth Court[[2]](#footnote-2) are divisions. The District Court exercises jurisdiction in civil disputes and the great majority of criminal prosecutions. The High Court holds jurisdiction in civil cases over $200,000 and in the most serious criminal matters (such as murder, manslaughter and certain banded/protocol sexual or drug offences). It is also the first level of appellate jurisdiction for certain proceedings determined in the District Court. The next Court is the Court of Appeal, which is purely appellate in nature, followed by our highest Court, the Supreme Court.

The District Court has approximately 150 District Court Judges, of whom some 55 hold Family Court warrants. Approximately 50 are designated as Youth Court Judges. The Youth Court was created to hold jurisdiction for criminal offending by young people or children under the age of 17.

The District Court operates from 63 Courts across the length of the country including the occasional Court sitting held in the Chatham Islands (a highly sought after circuit destination famed for high quality seafood), some 700 kilometres east of New Zealand.

In most situations, any application commenced by a party in New Zealand regarding a child’s interests under any of the group of Family Law Statutes, must be dealt with in the first instance by the Family Court.

In each year there are approximately 60,000 substantive applications made to the Family Court. Of these, some 31,000 relate directly to child issues (e.g. adoption, child neglect and safety, ‘guardianship’ issues). Many other cases will also have less direct connection with child issues such as; child support, domestic violence applications.

**The Statutory Framework**

*Introduction*

The Family Courts Act[[3]](#footnote-3) creates exclusive jurisdiction to the Family Court in respect of 12 statutes. In addition there are at least 8 further statutes which create a specific role for the Court. The jurisdiction is very wide, traversing issues such as marriage, adoption, human reproduction issues, protection of incapacitated persons, relationship property, child support, child protection, challenges against estates and so forth.

In property disputes the Family Court has no fiscal limitation to its jurisdiction, unlike the civil jurisdiction of the District Court which ends at $200,000.

This paper will focus primarily upon the Statutes which pertain to child issues, with a particular emphasis on ascertaining what, if any, role children or young persons might have in the proceedings. Some reference will also be made to the role of the Youth Court.

*Two Principal Statutes*

Although many of the family law statutes include aspects pertaining to the interests of children, two are dedicated to matters of child welfare. It is these two statutes which form the primary focus of this paper.

The first is the **Care of Children Act 2004 (COCA)**, which is concerned with aspects of guardianship of children, the care of (custody) or contact with a child (access) and Hague Convention cases. Most proceedings concerning the care or contact with children have a jurisdictional age limit up to the age of 16, unless there are special circumstances, such as issues of mental disability or capacity of a child[[4]](#footnote-4).

Guardianship ends when the child turns 18 or sooner, marries or enters into a civil union or de facto relationship[[5]](#footnote-5).

The **Children Young Persons and Their Families Act 1999 (CYPFA)** is concerned with two separate jurisdictions pertaining to young people under 17, one civil, the other criminal. The civil component covers matters of child protection from harm (“care and protection”), while the criminal component is concerned with ‘youth justice’. The statute creates a state social services agency, operated under the auspices of the Ministry of Social Development and commonly known as CYFS (Child Youth and Family Services). The Act provides opportunity of children to be heard in both care and protection and youth justice jurisdictions.

*The Increasing Opportunity for Child Participation*

The 1960s through to the early 1980s saw the introduction of what were radical changes to the area of family law, both in respect of child welfare issues and also property disputes between couples which impact upon children.

For instance, the Matrimonial Property Act 1976 introduced the concept of equal division of property between married couples. The three decades since its enactment have seen a considerable extension of property rights to cover persons who are in other forms of relationship, such as civil unions, de facto relationships and same sex marriages. The Act, now called the Relationship (Property) Act, contains a mandatory requirement for the Court to have regard to the interests of any minor or dependent children in all proceedings under the Act[[6]](#footnote-6). That provision is perhaps not as widely implemented as intended. The Court is also given discretion to appoint a lawyer to represent a child if ‘special circumstances make the appointment necessary or desirable’[[7]](#footnote-7). In the 2013 and 2014 years only one lawyer was appointed throughout New Zealand in such proceedings.

The 1980s also saw the creation of the Family Court as a standalone division of the District Court by the introduction of the Family Courts Act and a variety of other significant legislative changes

In 1980 there were amendments made to the Guardianship Act 1968, which materially altered the way in which disputes regarding child care issues would be conducted and determined. While there was no express requirement permitting children to be heard (such as there is now), the Courts were given the ability to appoint a lawyer to represent any child who is the subject of proceedings under that Act. However, any function for such lawyer to obtain the views of a child was at best implicit. Even as recently as the early 1990s it was not uncommon for many lawyers representing children to have never met their child client. There was an overwhelming trend for a rather paternalistic approach to be taken, namely that the adult protagonists knew best what was in the child’s interests and would advocate on those assumed grounds. That is not to say that lawyers never saw children during those years, but it was certainly far less common than it has been in the past 15 to 20 years. That general position remained until the Guardianship Act was repealed and replaced with the Care of Children Act in 2004.

*Differing Definitions of ‘Child’*

Various Statutes define what person is a “child” or “young person”.

For instance, the Domestic Violence Act defines a child as meaning a person who is under the age of 17 years, unless such a child is married, in a civil union or in a de facto relationship[[8]](#footnote-8). Under the Care of Children Act a child is defined as meaning a person who is under the age of 18 years[[9]](#footnote-9).

The Children, Young Persons, and Their Families Act 1989 creates two levels of a “non-adult” person. A child means “a boy or girl under the age of 14 years”, whereas a “young person” means a boy or girl who is over the age of 14 years but under the age of 17 years (but does not include a person who is or has been married or who is in a civil union[[10]](#footnote-10)).

The Family Proceedings Act, which covers a range of matters which can pertain to children, does not contain any definition of a child.

The Property (Relationships) Act 1976, which addresses upon resolution of property issues between separated spouses, or partners, does contain provision for the interests of “children” to be considered. However, the Act does not define with any precision at what age a childhood is deemed to exist for the purposes of the Act. Rather, it refers to children are “minor” or “dependant”[[11]](#footnote-11). Reference therefore must be had to the Age of Majority Act 1970 which, in s 4 declares that “for all the purposes of the law of New Zealand a person shall attain full age on attaining the age of 20 years[[12]](#footnote-12)”. That would therefore suggest that for the purposes of the Property Relationships Act, a child is a person who has not attained the age of 20 years.

It can therefore be seen that in terms of the Courts’ role in protecting the interests of children, much will depend on definitions in the specific Statute under which the Court is exercising jurisdiction.

**Statutory Opportunities to be Heard**

*Introduction*

As with the issue as to differing definitions of the age at which a person is or is not a child, the Statutes contain a variety of differing situations in which a child, or young person, is able to be heard in the proceedings. This paper will concentrate upon the child’s voice in COCA and CYPFA proceedings.

*The Care of Children Act 2004*

The Care of Children Act, which first came into force in 2005 and has undergone ongoing amendments, derives from the Guardianship Act 1968.

The original COCA introduced a provision affording to children an opportunity of expressing views on matters affecting them. Section 6 required that children be provided with an opportunity to express views on matters affecting them and that any views so expressed had to be taken into account, alongside other factors.

The Act also introduced an obligation upon lawyer acting for the child (LFC) to meet with the child to comply with s 6 unless the lawyer believed that exceptional circumstances existed that indicated such a meeting would be inappropriate.

It included special provisions which emphasised that any notional or globalised view of child welfare was no longer appropriate. Whereas previous legislation (such as s 23 of the Guardianship Act 1968) had provided that the Court have regard to the welfare of the child as a first and paramount consideration, the Care of Children Act went considerably further in requiring the welfare and best interests of “the particular child in his or her particular circumstances must be considered”.

The statute introduced six principles to which the Court was required to have reference in determining what outcome would serve the child’s welfare and best interests.

The combination of the child specific assessment in the particular circumstances affecting that child, informed by the six guiding principles, provides a significantly greater voice for children than the previous legislation had accommodated. These provisions signalled that any previous paternalistic approach of imposing one’s adult perspective as to welfare and best interests of the subject child, was no longer the appropriate mode of operation. The Court, and all participants within the court process, now had to focus upon the particular subject child in the very particular circumstances in which that child existed, informed by the six principles in s 5.

As opposed to the previous “distant advocate” approach, the inevitable practice developed whereby it became extremely rare indeed that a lawyer acting for a child would not meet his or her client to obtain their views on the particular matter in dispute. It would only be in very rare situations indeed that a lawyer would not see a child; for instance where a child may be suffering from some high anxiety whereby he or she might be significantly harmed by knowledge of the Court proceedings, or where the child had only recently been seen by Counsel. In such situations the normal practice would be for the lawyer to seek the Court’s sanction for any decision not to interview the child.

Likewise, it became almost inconceivable that any case under that Act would progress far into the process without a LFC having been appointed and having filed a report as to child views within a matter of weeks of appointment. Such lawyers also assisted parties with recommendations as to how the case might be progressed and as to options for settlement.

In situations where a hearing was required, it also became far more common for Judges to meet with children in order to hear from them directly on matters affecting them. That is not to say that Judges had not previously met with children, but certainly following the Care of Children Act it became far more likely that a Judge would meet a child than under the former legislation.

*Development of Express Safety Assessment*

1995 saw the introduction into the Guardianship Act 1968 of significant changes of approach where allegations of violence arose. The original Guardianship Act did not contain express provisions for determination of matters of violence. It was amended in 1995 following a distressing situation (known as the “Bristol Case”) where a man had killed his three young children before committing suicide.

The Guardianship Act was amended by way of the introduction of sections 16A through to 16C, which provided a defined process for safety assessment. Those provisions were, in turn, carried through to the Care of Children Act under sections 58 through to 62. The provisions remained in the COCA until undergoing a series of amendments through until the recent amendments on 31 March 2014. These amendments have changed the previously mandatory safety provisions, removing the express statutory factors by which a Court was required to determine safety.

The previous section 61 provided a very helpful range of factors to which the Court was required to have reference in assessing whether children were safe from any proven violence. Violence was originally defined as being sexual or physical abuse. Section 61 included the need for a Court to consider not only the views of the non-violent parent, but also “any views the child expresses on the matter” of violence. That provision facilitated a direct opportunity for a child to express matters on the very specific issue of violence. The provision provided to children a statutory mandated voice as to their perception of safety and risk.

The introduction of those provisions likely contributed to an increase in the number of hearings due, in no small part, to the mandatory requirement that the Court determine allegations of violence and safety. The fiscal consequences arising from such increase in hearings, alongside increases in cost deriving from a range of other aspects, formed part of the rationale for amendments amended last year. This view is supported by reference to Parliamentary debates and Select Committee proceedings[[13]](#footnote-13)

The need for hearings arose in any proceeding where an allegation was made that another party had used violence against a child or against another party. In such cases the Court was required to undertake a two stage enquiry:

1. The first enquiry was to determine on the basis of evidence presented to the Court, whether the allegation of violence was proven.

2. Where violence was proven, the Court was restricted from making any order giving to the violent party the role of providing day to day care to that party or allowing them to have contact other than supervised contact.

In terms of ‘the child’s voice’ on these safety inquiries, it is significant to note that from 2005 (when COCA came into force) until 2011 there was an express requirement in s 60 that the first thing the Court had to consider was whether to appoint a lawyer to act for the child for the purposes of the safety inquiry. This express mandatory consideration was removed in 2011 in favour of a general discretion to appoint a lawyer in any case where it appeared that a hearing was likely.[[14]](#footnote-14)

The issue as to whether an actual ‘hearing’ had to be held was the subject of consideration in *W v W* *[Custody][[15]](#footnote-15)* [2005] NZFLR 1122, in which the High Court determined that the Family Court was under a statutory duty to determine allegations of violence, even where the parents consented to orders for custody or access. The High Court held that if the parties and lawyers for the subject child or children did not seek to cross-examine deponents, then the Court could determine whether the allegations of violence were proved on the basis of affidavit evidence presented at Court. The Court confirmed there was no need to insist upon an oral hearing if the parties did not wish to cross‑examine. In essence, that decision permitted the Family Court, in particular circumstances, to conduct an assessment of matters of risk on the papers. That process lessened the need for oral hearings in many cases.

*Care of Children Act Reforms – March 2014 – “Diet COCA”*

While the original COCA may be seen as “The Real Thing”[[16]](#footnote-16), significant reforms occurred on 31 March this year. The reforms are regarded by some participants in family law circles as akin to Diet COCA, the provisions that created the fiscal excesses having been replaced by thinner substitutes. While the attempts to trim down the dietary excesses are obvious, it is too soon to see what long term side effects of those substitutes will be.

The Government, whose prerogative it is to regulate its fiscal resources, was concerned about a range of increasing costs in the family law sector. The increasing costs arising from aspects of the family justice system were significant. The Legislature moved to introduce a new system for the management of child cases under the Care of Children Act.

These changes have been somewhat controversial within a number of sectors. For instance, disquiet has been expressed by the legal profession regarding lessening of legal representation for parties and children, amongst psychologists for restrictions on commissioning of specialist reports and amongst counsellors for similar restrictions on pre-proceeding counselling. There has been significant concern amongst most Family Court participants around the rather cumbersome and confusing forms which have been developed to support the new system. There has also been an identifiable increase in the number of emergency applications being filed, thereby diverting Court resources to cope with that increase. Every day approximately 6 Judges are removed from the roster to cover a range of emergency applications nationwide (approximately 1,000 emergency applications are filed each month).

The narrowing of the gate permitting appointment of LFC has been designed as a mechanism for reducing fiscal expense by appointment of counsel unless absolutely necessary. That is a matter which Parliament is fully entitled to consider, and certainly one cannot argue that it would be an extravagant use of state funds to appoint lawyers where they are not actually necessary.

Data provided by NZ’s Ministry of Justice for the calendar years January to December 2013 and 2014 discloses;

* The number of appointments of LFC in ‘Guardianship’ matters (i.e. COCA) dropped by 715 (or 8.7%) in these calendar years,
* However, if one looks to the number of appointments after the amendments came into effect on 31 March 2014, there is a considerable change in numbers of appointments. Prior to the amendments an average of 681 LFC were appointed per month on COCA matters, compared with 584 average for the 9 months following the changes,
* Data from the annual number of substantive applications filed for the same periods shows COCA applications fell by 14.5% between the 2013 and 2014 calendar years,
* The data of LFC appointments also shows a sudden decrease in the number of lawyers being appointed in CYPFA cases in each of the months of September to December 2014. Given appointments of LFC in these cases is mandatory it would seem there must have been a drop in the number of applications being made by CYFS in each of those months.

The data therefore suggests that the recent amendments have had an effect upon the number of applications being filed and the number of lawyers being appointed for children.

One casualty of the reforms arises in respect of the approach to assessment of risk to the safety of children. The mandatory safety assessment and appointment of lawyer for the child, which were required under the Guardianship Act and first format of the Care of Children Act, no longer exist in such express terms. It is more by way of implication that matters of safety have to be considered, but certainly no statutory directive that the Court must undertake a safety assessment, or obtain the child’s views when a mere allegation might arise. Rather, it is only where a final protection order is in place, that the Court is expressly required to have regard to how a child’s safety might be protected from any violence[[17]](#footnote-17).

The issue of assessment of risk to safety is a significantly less directive and structured approach than that which existed since 1995. The new amendments do not require the Court to make the determinations according to statutory factors previously prescribed. The need to hear the voice of the child, or to have a lawyer appointed for safety hearings is again in implicit terms, rather than an express statutory factor required to be considered.

The new provision as to appointment of a lawyer to represent the child is a general discretion rather than the mandatory requirement to give thought to it. While one might hope that Judges will adopt a cautious and child focussed approach, there is always a danger with general discretions that cases will ‘fall between the cracks’.

*Current COCA Provisions as to Child’s Voice*

In terms of the current version of the Care of Children Act, the situations in which the views of the subject child arise can be summarised as arising as follows:

1. Section 6 requires that in any proceedings involving guardianship of the child, the day to day care of the child, contact with the child or administration of any property held for the child, the child must be given reasonable opportunities to express views on the matters affecting them.

2. Any views which the child may express must be taken into account in the determination of the Court.

3. Section 7 provides that the Court may appoint a lawyer to represent a child, but only if the Court has:

 (a) Concerns for the safety or well being of a child, and

 (b) Considers such an appointment necessary[[18]](#footnote-18).

This amendment narrows the gate somewhat for appointment of a lawyer for the child from the previous provision which had a form of presumption (in s 7(2)) that a Court had to appoint a lawyer if a hearing appeared likely, unless the Court was satisfied that no useful purpose would be served. The effect that presumption was that in most cases where a hearing appeared likely then a lawyer would almost always be appointed as a regular step in the process. The new provision emphasises that a lawyer is only to be appointed where there are concerns for the safety or well being of a child and where the appointment itself is necessary. There is an inevitable conflict between this higher standard of necessity against the need to also ensure mechanism to afford the child opportunity to express views (as required by s 6).

That conflict lies in the fact that one provision requires opportunity to express views, regardless of whether there are concerns for safety or wellbeing, yet the other imposes a threshold of ‘necessity’. It is arguable that achievement of the requirement to invite the child’s views creates the requisite necessity.

4. The previous requirement that a lawyer for the children had to meet the child (unless exceptional circumstances indicated a meeting was inappropriate) has been moved from the Care of Children Act and introduced as s 9B of the Family Courts Act (which is the Statute overarching all Family Law Statutes). This appears to be in order to achieve consistency of approach where lawyers are appointed, regardless of the statute.

In all proceedings governed by this Act, where such a lawyer is appointed they are required to obtain a child’s views and communicate them to the Court. It is expected that the lawyer will meet the child, unless the Court directs such meeting to be “inappropriate”.

5. A new provision which appears to be having the effect of delaying decisions as to when a lawyer might be appointed is s 135A COCA. This creates a presumption that each party will reimburse to the Crown up to one-third each of the costs of lawyer for the child or any costs of specialist reports. In without notice/ex parte applications some Judges are reluctant to appoint a lawyer for a child at the outset and will postpone such decision until all affected parties are heard on the point. It is arguable that a party who was not heard as to whether LFC be appointed should not later be held liable for costs arising from a decision in respect of which they had no input.

6. There was an earlier amendment to the Care of Children Act, implemented by a previous government, which enabled children to partake in specific counselling in certain situations. However, that provision was never enacted as regulations providing the necessary funding for such counselling was not passed by an incoming government. That provision for specific counselling for children, as opposed to the parents, has now been repealed. Given that it is possible for children’s feelings expressed at counselling to be conveyed to parents in order to improve the child’s situation, this denial of child counselling is viewed by some as a further diminishing of the child’s voice on matters affecting them.

*Children, Young Persons, and Their Families Act 1989*

This Statute has been part of the landscape of child protection and youth justice matters since 1989. It has been reshaped at various stages since enactment. It is unique in that, unlike all other family law statutes, it requires appointment of lawyer for children and also has mandatory duties upon the Court and lawyers to advise the subject children or young people of what is occurring in the proceeding. All other statutes create a discretion to appoint.

As prefaced, the Act has two key parts, the first being pertaining to care and protection of children in need (i.e. child welfare issues) and the second part as the youth justice system which creates a dedicated criminal justice system for persons under the age of 17 years.

The care and protection component is found in Part 2 of the Act. It establishes an extensive procedure for addressing whether a given child or young person is “in need of care and protection”. Whether a child is in need of care and protection is a factual consideration determined according to certain prescribed situations in s 14 of the Act. It is a fundamental step towards the invoking of the various procedural powers under that Act to first determine whether a child is in need of care and protection.

Part 4 of the Act is the dedicated criminal justice system for children and young persons. In essence, except in situations where children and young persons have been charged with murder or manslaughter, then all criminal charges against a person under the age of 17 years must be conducted under the Youth Justice processes found in the CYPF Act. There are also some exceptions pertaining to fineable only traffic matters.

In both the care and protection and youth justice components, a fundamental step in the process is what is known as “Family Group Conference” (FGC). There are different types of Family Group Conferences depending upon whether the case is one concerned with care and protection or is dealing with youth justice matters.

Each of those separate parts of the Act enables a child to be represented, but in different ways. If the matter is a care and protection issue then a lawyer for child may be appointed[[19]](#footnote-19), whereas if the matter is youth justice in nature then a youth advocate is appointed[[20]](#footnote-20).

In addition, there is a unique capacity to appoint a person known as “lay advocate” in both parts to the Act. This role is akin to a person acting as an advocate to present to the Court matters of familial culture or specific ethnic cultural matters. Although that provision has existed since 1989, it has rarely been utilised in the care and protection regime, and has only recently gained increasing favour in youth justice jurisdiction in the past five years or so.

As indicated, a fundamental key to the door of jurisdiction under this Act is that a Family Group Conference must have been held. Once proceedings are filed in Court, it is almost automatic that a lawyer will be appointed to represent the subject child and that lawyer will attend the Family Group Conference.

Section 22 of the Act provides that the child or young person in respect of whom the conference is being held is an entitled person to attend the Family Group Conference unless the Care and Protection Co-ordinator (the person who convenes and conducts the FGC) is of the opinion that it would not be in the child’s interests to attend, or it is “otherwise undesirable” for a child to partake in the Family Group Conference.

A similar provision applies in the youth justice aspect of the Act in that a youth advocate is appointed to represent a child or young person when a charge has been laid in the Youth Court alleging an offence. Often there would have been what is known as “intention to charge” Family Group Conference, which occurs prior to charges to being laid. In some instances a new Family Group Conference will be directed, at which the youth advocate may attend and represent the child. But in many situations the youth advocate will have discussed the charges with the youth, advised as to the outcome of family group Conference and the intention to charge Family Group Conference will be often then be accepted when the matter is before the Youth Court.

*Family Courts Act 1980*

As indicated, this Act is the umbrella statute which creates and regulates the jurisdiction of the Family Court. Section 11 of the Act expressly lists the 12 Statutes pursuant to which any proceedings are to be heard and determined by the Family Court. There are eight other statutes which are not expressly listed but which create jurisdiction for the Family Court to determine matters. Under the recent “Family Court Reforms” a global provision has been included as to the role for any lawyer who has been appointed to under any of the Statutes to represent the interests of children[[21]](#footnote-21). Section 9B was introduced because the fiscal concerns that previously arose from the lack of statutory parameters shaping the role of such counsel.

It is therefore an important provision that it frames the parameters of such lawyer’s role and obligations:

“(1)  The role of a lawyer who is appointed to represent a child or young person in proceedings is to—

 (a)  act for the child or young person in the proceedings in a way that the lawyer considers promotes the welfare and best interests of the child or young person:

(b)  ensure that any views expressed by the child or young person to the lawyer on matters affecting the child or young person and relevant to the proceedings are communicated to the court:

(c)  assist the parties to reach agreement on the matters in dispute in the proceedings to the extent to which doing so is in the best interests of the child or young person:

(d)  provide advice to the child or young person, at a level commensurate with that child's or young person's level of understanding, about—

(i)  any right of appeal against a decision of the court; and

(ii)  the merits of pursuing any such appeal:

(e)  undertake any other task required by or under any other Act.

(2)  To facilitate the role set out in subsection (1)(b), the lawyer must meet with the child or young person and, if it is appropriate to do so, ascertain the child's or young person's views on matters affecting the child or young person relevant to the proceedings.

(3)  However, subsection (2) does not apply if, because of exceptional circumstances, a Judge directs that it is inappropriate for the lawyer to meet with the child or young person.

(4) A lawyer appointed to represent a child or young person in proceedings may—

(a) call any person as a witness in the proceedings:

(b)  cross-examine witnesses called by any party to the proceedings or by the court”.

*Domestic Violence Act 1995*

In terms of the role of children in or under the Domestic Violence Act, s 81 permits the Court to appoint a lawyer to represent a child in any proceedings under the Act. Appointment is again discretionary. As no express parameters of that counsel’s role is prescribed within the Act, it is likely that the parameters in s 9B Family Courts Act apply.

In any event, the child’s voice must be heard because of an important provision in s 14 of the Domestic Violence Act. Where a Court has determined that violence (as defined in s 3 of that Act) has occurred, then a Court must move to a secondary consideration as to whether a Protection Order is necessary for the protection of the applicant (the victim of violence) or any child of the applicant’s family. Section 14 contains mandatory requirements upon the Court; such requirements have been endorsed by the New Zealand Court of Appeal in *Surrey v Surrey.*[[22]](#footnote-22) In s 14(5) the Court is required to have regard to the perception of the applicant, or the perception of a child of the applicant’s family (or both) of the nature and seriousness of the behaviour in respect of which the application is made and also the effect of that behaviour on the applicant, or a child of the applicant’s family, or both.

Accordingly, as children are often involved in such proceedings, and given the mandatory nature of s 14, the views of children must be obtained.

However, this provision is often not implemented in practice. There are many situations where Protection Orders are sought, and obtained, on a without notice basis, meaning there has been no opportunity or need to appoint an LFC due to the clear case made for interim protection. Often, a lawyer to represent children is not appointed in proceedings which are solely under the Domestic Violence Act. It is more likely that lawyer for child will be appointed where there are ancillary applications under the COCA.

For this reason it is often the case that protection orders are considered but where the views of children have not actually been obtained in accordance with what is a mandatory requirement. However, in situations where lawyer for child has been appointed then generally there will be some feedback provided by such lawyer on a child’s views as to such matters, dependent of course upon the age and maturity of that child.

The Domestic Violence Act also has provision for children to partake in “protected person’s programmes”,[[23]](#footnote-23) which are specific programmes of counselling of a therapeutic nature designed to assist victims of violence, and children, to cope with the distressing consequences of violence and to learn mechanisms of making themselves safer. This does enable a child to express his or her views on matters affecting them within a therapeutic environment.

*The Family Proceedings Act*

The Family Proceedings Act 1980 was a statute which had a greater import into family law disputes than is currently the case. Formerly it regulated matters of child maintenance prior to the introduction of the Child Support Act 1991. The Act continues to regulate issues on marriage, civil unions, de facto relationships, issues of adult maintenance, some aspects of international child maintenance and matters of paternity.

It gives the Court discretion to appoint a lawyer to represent children in any proceedings under the Act.[[24]](#footnote-24) No express brief is given for the role of that counsel. In accordance with the philosophy behind the recent amendments to family law statutes, an appointment of a lawyer to represent a child in any proceedings under this Act may again only be made if the Court is satisfied that “the appointment is necessary or desirable”.[[25]](#footnote-25) One envisages that it would have been unlikely if a Judge would ever have consciously elected to appoint a lawyer for a child if they felt such appointment unnecessary or undesirable.

**Case Law**

A variety of cases have discussed the issue of how children’s views be obtained.

*Should the Judge Meet a Child?*

There is no mandatory requirement upon Judges under the key family law statutes (COCA and CYPFA) to personally interview or meet the child.

In the decision of the full Court of the High Court in *K v K[[26]](#footnote-26)* the Court held that the wishes of the child should primarily be introduced through the children’s lawyer or through an interview of the child by the Judge. This decision was primarily concerned with the role and process issues for Court appointed psychologists. It made it clear that such reports ought not to be obtained solely as a method for obtaining the wishes of the subject children. The decision does not prevent psychologists from ascertaining and reporting the views or wishes of subject children when the report writers report back to the Court on the wider brief.

The decision[[27]](#footnote-27) confirms that it is appropriate for a Judge to use the expert assistance derived from a child psychologist to assist the Judge in evaluating the wishes which may have been expressed to the Judge by the child.

The High Court in *C v L[[28]](#footnote-28)* confirmed that interviewing of a child by Judge was entirely appropriate in light of the provisions of the United Nations Convention of the Rights of a Child.

In the High Court decision of *Brown v Argyll[[29]](#footnote-29)* the High Court was considering the provisions of s 6(2) of the Care of Children Act. This is the provision which requires that in all proceedings under that Act a child must be given reasonable opportunities to express views on matters affecting that child and that any views the child expresses “either directly or through a representative” must then be taken into account. The Court confirmed that the use of the word “directly” envisages the child being able to express the views to the presiding Judge. The Court confirmed that “whether or not a Judge chooses personally to see the child to enable views to be expressed will ultimately be a matter of individual judgment”.

The provisions in s 6 insofar as considered by the High Court remain unchanged after the recent amendments to that Act. The position remains that it is entirely discretionary as to whether or not a Judge interviews or meets with a subject child. As with all discretions under the Care of Children Act, it must be exercised according to the paramount consideration of the welfare and best interests of the child and against the purposes and principles of that Act.

The same position applies in the care and protection jurisdiction under the CYPF Act. In *T v Chief Executive of CYFS[[30]](#footnote-30)* Gendall J held that it is not obligatory for a Judge to interview children personally. He confirmed that it is entirely discretionary.

In the earlier Court of Appeal decision of *B v DSW[[31]](#footnote-31)* a party argued that the Family Court Judge had been in error when he elected not to interview the children himself. The Judge had reports available from both lawyer for child and a psychologist on such matters. The Court of Appeal determined that the Judge “concluded on cogent evidence that his interviewing of the children would not be in their best interests. The Judge was obliged to give consideration to the wishes of the children…How he ascertained those wishes was in this case for his discretion”.

In an interesting decision of the High Court, *C v S [Parenting orders][[32]](#footnote-32)*the Court held that a senior and experienced lawyer and a similarly senior and experienced Family Court Judge had failed to comply with the statutory obligation to give a four year old child the opportunity of expressing views on matters affecting her. The lawyer had already met the child on three previous occasions and, together with the Judge, visited the child at her pre-school centre prior to the hearing, observed her for 20 minutes and spoke to school staff. It was unusual then, and remains rare that a Judge would actually take the step of visiting a child in that situation. Nevertheless, because neither the lawyer nor the Judge actually asked the four year old if she wanted to express views on the matters affecting her, the appeal Court held there was non-compliance, albeit immaterial to the appeal outcome. The Judge emphasised that any weight to be accorded to the views of a young child was a different consideration to the obligation to offer opportunity to express them. Although few experienced practitioners would have disagreed with approach taken by the LFC and Family Court Judge, this case is best seen as a situation where logic fought the law, and the law won. It seems that regardless of the fact it was unlikely any great weight would have attracted to views which might have been obtained if the Judge had spoken to the child, the primary obligation is nonetheless to seek them.

Some cases have held that while it is not obligatory to meet with the child it might nonetheless be unwise for a Judge not to see the child where the child has otherwise expressed firm views and appears to be of maturity.

*Rationale for Meeting Child*

There are a variety of situations where Judges have felt it may be prudent to meet with the child or interview the subject child;

1. *Confirmation of Other Sources*

For instance in the decision of *Loffley v Vuletic[[33]](#footnote-33)*, Thomas J found it to have been “extremely helpful” for the Judge to speak to the children as his own appreciation of the children’s wishes, as gleaned from the psychological report, had been “considerably enhanced by speaking directly to them”.

1. *Gaining an Appreciation of the Child as a Person*

There are also a number of cases where Judges have felt that it was helpful to meet the child or children so as to gain an appreciation of them as individual persons.

For instance in *LJG v RTP* *[Child Abduction][[34]](#footnote-34)* Her Honour Judge O’Dwyer found that it was helpful to her that she interviewed children aged 10 and 11 to enable her to assess the following:

(i) the children’s views and wishes.

(ii) their level of understanding of the particular issues before the Court; and

(iii) their maturity.

1. *Prudence in Particular Circumstances*

In the High Court decision of *C v L[[35]](#footnote-35)* the High Court determined it would have been safer and appropriate for the Family Court Judge to have interviewed a 13 year old child so as to have “formed his own impression, independently of an expert”. Another way of viewing that position would be to say that in certain circumstances a Judge may need to be cautious in relying merely upon what has been reported to the Court either by lawyer for the child or by the psychologist and instead undertake their own meeting with the subject child to gauge matters derived from the reports, as against what the child says directly to the Judge.

A similar approach was taken by Chisolm J in the High Court decision of *JRW v EW[[36]](#footnote-36)* in which the High Court held that interviewing of the child meant that the Family Court Judge was well placed to determine whether the psychologist’s conclusions were accurate. The Court added that a Judicial interview might also be helpful in disclosing perspectives that were not necessarily captured through the psychologist or by the children’s own counsel.

1. *Clarifying Matters for the Child*

In other decisions the Courts have taken the view that a meeting with the child affords an opportunity for a Judge to explain to the child that the sole responsibility for decision making lay with the Court, rather than with the parents or with the children themselves. In some situations the Court has felt this is especially beneficial in cases of alienation so that the child is informed directly by a Judge that the decision has not been made according to what either parent might be pursuing.

It was also felt in other decisions that even where there is consent reached between the parents, it can nonetheless be helpful for a Judge to meet with a child to confirm directly to the child that the outcome achieved has been a result of the parents’ own agreement, not merely one imposed by the Court. This can be extremely beneficial to children in situations to know that the parents have actually been able to work together to reach the outcome.

**Judicial Development of Child Interviews**

In his article *“Judicial Interviews of Children – Some Legal Background”*[[37]](#footnote-37) Associate Professor John Caldwell (Canterbury University) suggested three central areas of concern as to the concept of Judicial interviews with children;

(a) Judicial competence;

(b) Stress for the child;

(c) Compliance with natural justice principles.

*Judicial Competence*

Reference was made to universal concerns regarding the level of competence of members of the Judiciary to partake in the process of interviewing or meeting with children. Certainly the New Zealand experience would suggest there is minimal training of Family Court Judges as to the important task of meeting with children. There are occasional discussions at Judicial conferences and the occasional workshop at which persons more particularly trained in child interviews might present guidance. Each year there are update seminars for Family Court Judges and occasionally these will include the topic of child interviews. That aside, there are no regular intensive programmes established for this important topic. Regularly, Judges do express concern about their particular lack of training and expertise in this important area. It must be noted however, that most practitioners appointed as Family Court Judges will likely have had significant years of practice as lawyers for children in any event.

It is fair to say that any concerns expressed regarding Judicial competence, or the need to hone it, is not without some merit.

*Stress for the Child*

There are also varying views as to whether the interview process itself adds another level of stress for a child. In most cases it is likely that by the time they meet with a Judge at hearing, they will have seen a number of professionals. Unfortunately, many cases which eventually proceed to hearing have had a long gestation period which can often involve interviews by social workers, almost certain meetings with their Court appointed Counsel (often on several occasions) and the possible involvement of specialist Court report writers in the form of psychologists.

Given this pathway to hearing, it is not unreasonable that there is concern that children can be overexposed to the dispute as an unintended consequence of the various requirements that their views to be obtained. The reality is that the central statutes under which the Family Court exercises jurisdiction place heavy emphasis upon the child’s voice being heard in some manner. While that does not expressly require a Judicial meeting, it is often the case in respect of proceedings which require a defended hearing that Judges will meet.

*Natural Justice Rights of Parties*

A vexing issue has been that of what level of disclosure of what has been said in any Judicial interview should be made to persons affected, namely parents and/or guardians.

There are a variety of case authorities around the issue of natural justice. In the High Court decision of *R v R* [[38]](#footnote-38)Gendall J considered the interplay between the ordinary principles of natural justice and the paramount consideration of the welfare and interests of children. The upshot of the High Court’s decision was that the extent to which the paramount consideration of child welfare might override some aspects of natural justice varies depending upon the particular issues before the Court. He indicated that much depends upon what the particular rule of natural justice in consideration might be. The most obvious principle of natural justice applied in child disputes is the perceived right of parents or guardians to know what their child may, or may not, have said in the context of a discussion with the Judicial Officer who is determining the very dispute that the parents have been unable to resolve. He indicated that it would be a rare case where the child’s welfare demanded that a party suffer some procedural unfairness and it was fundamental that a parent be afforded the opportunity of knowing what “may be coming” (i.e. what the child may have said) and be given the opportunity of being heard.

As indicated by John Caldwell, any views expressed by the child in the course of the conversation with a Judge could potentially be extremely influential in the making of a Judicial decision, one which is almost certain to impact on a parent’s pre-existing guardianship rights.

Gendall J held that in some circumstances children may be interviewed in private and their wishes ascertained without the parties’ knowing what was said. That ruling was made in the context of a precondition that it would only be in a very rare case indeed that parties may not be told what the child had said.

In a more recent case under the care and protection jurisdiction (*T v Chief Executive of the Department of Child Youth and Family Services[[39]](#footnote-39)*) Gendall J indicated that there was nothing in the statute or in the “proper procedures” of the Family Court that required the presence of parties while the Judge was interviewing the child. He nevertheless concluded that the parties would be entitled to know of the child’s wishes in the course of the judgment or the outcome of the proceedings.

It is fair to say that the thrust of New Zealand case authorities would support the conclusion that in most, if not all cases, the normal natural justice requirements of prior disclosure to affected parties of material matters touching upon the issue in dispute should be made. An opportunity for the parties to comment before decision should be afford unless child welfare considerations makes such disclosure inappropriate. Those considerations would necessarily be undertaken on a case specific approach and certainly no general rule or approach can be taken.

In a decision of Chisholm J in the High Court in *W v N[[40]](#footnote-40)* the Court considered issues of Judicial interviews and disclosures of what was said in the context of determination of Hague Convention proceedings where the defence of “child objection” was raised.

Chisholm J held that where the parties have not partaken in the Judicial interview, they should be given opportunity to comment before judgment was given. He confirmed that the procedural approach adopted by the then Principal Family Court Judge, Judge Boshier in *J v M[[41]](#footnote-41)* (Family Court, North Shore, 2004-044-1857, 20 April 2005) was appropriate.

Judge Boshier proffered the following suggestions as to the approach to be taken in terms of child interviews and disclosures in the Hague context:

(a) Where the child objection defence is raised it is important to assess that objection through the best evidence possible. Judicial interview of a child in such circumstances is a direct and helpful way to obtain wishes, and therefore assess the objection.

(b) As imperfect as Judicial interviews might be, it permits the Judge, first hand, to gauge the degree of maturity of the subject child.

(c) Giving the child the right to be heard in such fashion and ensuring that the child is represented, appeared to give proper effect to the UNCROC.

(d) As a Judicial interview forms part of the Judicial process, it is important that impressions and views obtained by the Judge are able to be later scrutinised.

To that end Judge Boshier felt it desirable that the Judicial interview be recorded and made available either in transcript or audio form subsequently.

On the point raised by Chisholm J that the Boshier approach should be taken where affected parties have not partaken in the Judicial interview, it would be extremely rare in New Zealand that parties have actually been present when a Judge has interviewed a child. Indeed in over 30 years in practice, both at the Bar and the Bench, I have never encountered, or heard, of a situation where parties have actually been present when the child was interviewed.

*What should a Protocol include?*

In Caldwell’s 2007 article he outlined considerations that might be incorporated into any protocol or guideline for child interviews:

1. Audio recording of interviews was felt to be important. Caldwell considered it could be an invaluable tool to assist the Court if any later appeal against the Judge’s decision or complaint against the process taken by the Judge was made. I am uncertain whether Professor Caldwell considered the risks that can sometimes flow from a predetermined decision to record an interview and play it back to the parents. I later discuss a real case example of pitfalls of this approach.

2. The timing of the interview – Caldwell it felt it should be held towards the end of the case and perhaps after the parties had concluded the calling of their witnesses, but before the evidence had technically closed. I lean towards this suggestion.

3. Any apprehension over Judicial interviewing begins to dissipate if the predominate purpose of the conversation is seen as simply one of the Judge meeting and greeting the child. Caldwell felt that this may be simply to explain the Court process to the child and the Judge’s role in decision making. There is great merit to this approach.

4. He lent to the view that it can be helpful having a Court report writer present to interpret and evaluate the child’s responses to the Judge’s questions. Indeed some Judges and jurisdictions approach the issue by having the psychologist actually undertake the interview with the Judge more as the observer. Prior to the decision being made, the parties could be provided with the transcript and also a report from the Court reporter as to the nature of the interview, whereupon the Court reporter could be open to cross-examination. While this approach might be seen as the Rolls Royce version, it would create immense resource issues as such a process would likely add at least a day, probably more to the hearing time in an environment where Judicial and Court resources are forever under increasing pressure. In addition, there is some merit to the contrary view of purists that this approach may delegate, to some extent at least, the Judicial function to the psychologist.

5. In *C v S* *[Parenting Orders][[42]](#footnote-42)* Randerson J indicated that the views of children can be obtained through lawyer for the children by a Judge directly or through a psychologist’s report, provided the report was not solely for such purpose. The Court affirmed that the obtaining of the children’s views might well through a combination of those various approaches. There is some support for that approach as it is highly probable that a subject child would already have met a psychologist during the report writing process prior to hearing and it may ease any anxiety for the child to have that known person present when they have opportunity of meeting yet another stranger, the presiding Judge.

In summary, the thrust of New Zealand case authorities is very much towards child interviews being a standard practice and that there ought to be a recording of what the child has disclosed, subject only to any restrictions arising if, in the particular circumstances of the case, the child’s welfare and best interests override aspects of natural justice. Any views so obtained ought to be disclosed to the parties at a point prior to the Judge deliberating upon the outcome so that parties have the opportunity of being heard upon any matters so disclosed to them.

In the conclusion to this paper I present a cautionary tale, one which advocates against a rigid prescribed approach to these matters.

**Recent Research on Judicial Interviews**

*Introduction*

In recent years there has been an increasing interest in the topic of Judicial interviewing of children. While I will use the terms ‘interview’ and ‘meeting’ interchangeably, I emphasise there is a distinction as to whether a Judge is actually conducting an interview, or simply meeting with a child.

There have been a variety of surveys undertaken including:

(a) Murray Cochrane – *“Children’s Views and Participation in Decision‑making”*[[43]](#footnote-43). In this survey Murray Cochrane, a family lawyer undertook an email survey in 2005 of 34 of the then 39 Judges holding Family Court warrants. He also undertook three individual interviews.

(b) Pauline Tapp – *“Judges are Human Too – Conversation between Judge and a Child as a Means of Giving Effect to Section 6 of the Care of Children Act 2004”*[[44]](#footnote-44). Professor Tapp interviewed 14 Family Court Judges and one High Court Judge and undertook analysis of certain judgment involving children’s views.

(c) Judge Ian Mill – *“Conversations with Children; a Judge’s Perspective on Meeting the Patient before Operating on the Family”*[[45]](#footnote-45) – in this paper Judge Mill undertook an informal survey of 10 of his Judicial colleagues.

All papers I am aware of concern themselves with the topic of whether and how Judges meet or interview children. However, I am not aware of any data capture or analysis of such matters as;

* Of the number of applications actually filed, what proportion result in Judicial meetings with children,
* Of the cases that proceed to hearing, how many involve Judicial meetings,
* How meetings have actually been ‘recorded’ or conveyed to parties.

Nevertheless, the papers to date do provide considerable illumination as to the current approach of our Judiciary.

Between 2006 and 2013 Associate Professor John Caldwell undertook the most extensive survey of Judges. The more recent project, in 2012, was in conjunction with Associate Professor Nicola Taylor of the University of Otago. These surveys have incorporated:

(a) In 2009 Professor Caldwell collated surveys that he had undertaken of Family Court Judges in November 2006 and in November 2009. The 2006 survey included an extensive postal questionnaire which was responded to by 32 of the then 42 Family Court Judges. In 2009 Professor Caldwell undertook an update postal questionnaire and received a response of 32 out of the then 45 Judges. He monitored the shift in position in the intervening three years, the most identifiable of which had been an increased willingness to speak directly to children.

(b) In 2012 a more extensive survey was undertaken by Professors Caldwell and Taylor, with the support of the then Principal Family Court Judge. Every one of the 53 Family Court Judges in New Zealand was personally interviewed. Interviews were conducted at various locations around New Zealand and interviews ranged in duration from 45 mins to 2.5 hours, with most interviews taking approximately 60 minutes.

 The outcome of that survey has been included in at least two publications under the following titles and references:

* *Judicial Meetings with Children: Documenting Practice within the New Zealand Family Court[[46]](#footnote-46)*
* *Natural Justice and Judicial Meetings with Children: Documenting Practice Within the New Zealand Family Court*[[47]](#footnote-47).

Given I have not undertaken any research or surveys myself, with some gratitude I rely upon the outcomes of the extensive surveys by Professors Caldwell and Taylor. I draw from the conclusions reached by the authors and summarise their conclusions as follows:

*A. First Alert that Child Wants to Meet with the Judge*

The survey disclosed that Judges are normally first alerted by lawyer representing a child that the child would wish to meet with the Judge. This is perhaps unsurprising given that Judge Boshier had issued a Practice Note for Lawyer for Children in March 2011. This Practice Note outlined the approach which ought to be taken with regard to Judicial meetings with children, at paragraph [10] of which it was stated:

 10.1 At a reasonable time prior to the hearing, the lawyer shall advise the Court whether or not he or she considers it appropriate for the child to meet the judge as a part of the process of giving the child reasonable opportunities to express his or her views or for any other reason.

 10.2 The lawyer shall give the reasons why it is, or is not appropriate for the child to meet the judge and, in particular, the lawyer shall advise the child’s views about such a meeting.

The general approach adopted by the Courts has been that if a child expresses no interest in meeting a Judge then they will generally not be required to do so. Most Judges will follow the guidance received from the child’s lawyer, although it is not by any means automatic that lawyer for child’s advice will be followed. The survey disclosed that Judges do like to make a conscious decision in each case whether or not to meet with the child.

In situations where a lawyer has not raised the issue of a Judicial meeting/interview, then the Judge will usually raise this during the pre-trial conference stages. In some regions the Judges utilise a “Hearing Checklist” which includes a standard question as to whether any party requests that a Judge meet with a child. The Checklist includes an enquiry as to which party is seeking the interview and seeks brief reasons why a Judicial interview is sought. It enquires as to when the children ought to meet with the Judge.

The authors reported that many Judges often reported that there could sometimes be unexpected arrival of children at Court, often brought in by a parent, to meet a Judge. In such a situation most Judges elected to see the child for the reason that they recognised that by that stage the child would have had some expectation that they would be meeting with a Judge. Whether that expectation was the child’s alone would often by enquired into. In some cases, such as where the child had already recorded very strong views throughout the lead up to hearing, some Judges declined to see the child.

All Judges surveyed considered it vital that parents were informed of the process of Judicial interview and this was often discussed during pre-trial stages. It was not usually considered necessary to obtain parental consent in order to meet with the child as most Judges considered that such consent was implied by virtue of the fact that the parents had approached the Court to determine their particular dispute. No Judge reported encountering a situation where the parent had either refused for their child to be Judicially interviewed. Often the converse was the case whereby parents were insistent upon a child meeting the Judge.

*B. Purpose of the Judicial Interview*

The authors recorded that the purpose of the meeting was one of the most critical aspects of the New Zealand approach to Judicial meetings with children and that it was likely one of the factors most important in its effectiveness. They reported that most Judges felt the purpose of the meeting was not to elicit the child’s views as such. Judges reported that they were already well aware of the children’s views from lawyer for child reports or from the evidence, such as evidence of the parties or specialist reports.

The Judges considered it very important to be honouring the requirement in s 6 of the Care of Children Act to provide “reasonable opportunity” for children to express their view on matters affecting them. Judicial interviews were regarded as central to the achievement of that object.

The authors concluded that the Judicial interview was a means by which those children who choose to, can express their views directly to the decision maker. They reported that most Judges do not ask children “the ultimate question” about their preferences, although some Judges indicated that, at times, they might ask that question. Other Judges saw the meeting as an opportunity to explain the process and to reassure the child that the Judge is the decision maker, rather than anyone else. They reported that several Judges regarded the purpose of the Judicial interview as a “meet and greet” only and that this was particularly true for meetings with younger children or for Judges who did not need, or want, to hear the child’s views.

*C. Number of Children Who Judges Meet Per Year*

The survey disclosed that Judicial meetings do not form a large part of the workload of Judges. Seventy percent of Judges met with 15 of fewer children per year, with most of those Judges (40%) meeting with between six and 10 children a year.

In the survey the Judges raised a number of factors influencing the numbers of the children they do so. These factors included such things as:

* The child’s age. Most Judges will only see young children (especially pre‑schoolers) as part of a sibling group for meet and greet purposes.
* Whether the child wants to meet the Judge or not.
* Whether the parents, their counsel or lawyer for child felt it was necessary or appropriate for the child to meet the Judge (subject to the Judge’s ability to decline such requests).
* Alienation cases where the child’s strong views will likely already be known. In these situations some Judges will meet these children, while others will not.
* Another factor influencing whether Judges will see the children is the Judge’s work schedule and pressures from the time available.
* The nature of the hearing will also be relevant. It is more likely the Judges will see children for long cause hearings of a day or more which involve parenting disputes under COCA. However they will not usually meet children in short cause hearings (less than one day) or in proceedings involving family violence, care and protection or relationship property.

*D. Duration of Judicial Meeting*

Judges reported that meetings with children could range in duration from 15 minutes to 75 minutes. Meetings of 30 minutes or less were the most common duration (46%). Twenty-four percent of Judges said that the length of the meeting varied with the child’s age – 15-20 minutes for young children and up to 60 to 75 minutes for older children or sibling groups.

Although this aspect was not mentioned in the survey outcomes, it must be remembered that some Judges will meet sibling groups together, while others will meet the children individually. Some elect to meet the sibling group together and then the children individually to see whether any statements by the children, or inter-sibling dynamics alter depending upon their presence of siblings or not. That approach can, of course, consume a considerable amount of time.

*E. Who Was Present During the Meeting?*

In all cases it was reported that the Judge, children and the children’s counsel were always reported as being present. Thirty-eight percent of Judges did not have Court staff present, mainly for the reason they considered the presence of another person to be a possible distraction. However, 62% of Judges usually had a registrar or Court taker present with them either for security reasons or to assist with the recording of any interview. Most Judges (85%) had never had the specialist report writer (i.e. psychologist) present during the Judicial interview. The survey disclosed that many Judges would never contemplate such an approach, while a minority felt that the concept had merit but that it would alter the purpose of the Judicial meeting, or might be unaffordable in the current economic climate. Only 15% of the Judges surveyed had had the psychologist present, in most cases the presence was a one-off. One Judge reported that he had had a psychologist present in a quarter of his Judicial interviews.

The survey disclosed that it was very rare for family members to be present. In one case a Judge had a Church pastor present as it was felt that the presence of the Church pastor was critical to the successful outcome of the particular case.

*F. Location of Meeting*

The location of the meeting was linked to such issues as building layout and also the particular Judge’s preference as to whether or not the interview would be recorded. Judges’ chambers were the most frequent location for Judicial meetings, used by 80% of the Judges surveyed either all or some of the time. Twenty Judges always used chambers while only three Judges seldom used chambers.

While the most frequent location was in the Judge’s chambers, the courtroom was used by 40% of Judges especially if they required access to Court recording equipment. Twenty-eight percent of Judges mentioned that often a tour of the Court room would occur, often as an icebreaker prior to the interview, or indeed at the conclusion of it.

Most Judges disapproved of the use of external locations, partly because of logistical difficulties, such as scheduling of the hearing, but also because they felt that the more formal environment of a Court building would better respect the significance of the occasion for the child. Only three Judges mentioned that there were rare occasions when they had met a child at a school or in another location such as a restaurant or the office of the child’s lawyer. This data confirms my earlier observation as to the outcome in *C v S[[48]](#footnote-48)* given the extraordinary length to which the Judge and LFC went to in their mistaken belief they had complied with s 6.

*G. Timing of Meeting*

Seventy percent met with the children before the hearing commenced. Only three Judges conducted the meeting during the days leading up to the hearing. It was more common that the meeting was held immediately prior to, or at the start of the scheduled hearing time.

Thirteen percent of Judges preferred to meet the child part way through the hearing after the parties, and sometimes the specialist report writer, had given their evidence. Only 11% of Judges preferred to meet the children once all the evidence had been heard but prior to the conclusion of the case. Six percent of the Judges preferred a flexible approach whereby they would time the interview depending upon such circumstances as the nature of the case and the child’s availability.

As an aside, I observe that the process by which hearings are allocated can often be a central determining factor in when a Judicial interview might occur. Often Judges are not expressly involved in the allocating of the hearing time or approached as to when they would wish to meet with the child. In some Courts a practice has developed whereby it is assumed the Judge will be meeting the children at the commencement of a hearing. It is only at the very late stages when a Judge is preparing the Court file that they may even become aware of the fact they are to meet with the children. I suspect that much of the approach to these matters is a consequence of established process rather than anything deriving from specific consideration.

*H. Confidentiality – Feedback to the Parents*

The survey disclosed that Judges expressly told the children that what they said was not confidential and they needed to think carefully about what they wanted to tell the Judge. Forty-six Judges (87%) took notes of the interview, 38 of whom took notes in the presence of the child while eight made notes after the child had left. Upon their return to the Court room the Judges always informed the parents of what the child had said. Thirty-two percent of Judges gave a full and detailed summary, while 64% summarised the gist of the meeting. Four percent informed the parents of specific points only. All Judges offered the lawyer for the child the opportunity in Court to confirm the oral summary and raise any additional points deriving from the meeting with the child. That summary then became part of the Court record.

*I: Recording the Meeting*

The authors reported that Judges varied in their preference for recording and meeting with the child. Sixty-four percent did not audio-record the discussion, while 30% did on at least some occasions. Simple “meet and greet” situations were unlikely to be recorded.

The Judges who were most likely to record the meetings were either recently appointed or had the longest periods of service, although some Judges did express discomfort with the practice of recording. The Judges who had a flexible approach to whether or not to record were more likely to record if they were warned in advance that the child might make serious allegations, or that the case involved parents who were perceived as “difficult”.

Those Judges who did not record the meeting characterised audio-recording as an artificial intrusion and a “dampener” on the discussion. They were also concerned about the evidential implications of a tape in its failure to capture non-verbal communications and the child’s body language.

Conversely, the Judges in favour of recording emphasised the need to comply with natural justice and protect their decisions against appeal. Only one Judge had recently changed his practice to begin audio-recording, while 12 Judges had abandoned their previous practice of recording.

It was rare for typed transcripts of recordings to be prepared. The reasons for this were largely practical; the time delays in obtaining the transcript, the transcripts inability to capture non-verbal cues and the fact that an audio-recording was felt as being sufficient to protect the Judge on appeal.

Some Judges were concerned that the transcript might be dissected to evaluate or criticise the quality of their interviewing styles. Seventeen percent of Judges permitted the parents to listen to the audio-recording.

*J: Post-Decision Interaction*

All Judges surveyed reported that the task of informing the child of the outcome of the hearing was left to the child’s lawyer. Some Judges would explain their decision to children, although this was not a common practice. Those who did advise children of the decision reported some good experiences, while others encountered poor responses.

*K: Terminology*

In the survey Judges were asked what they would prefer to call their time with the child. Fifteen percent were happy to continue to use the term “Judicial interview” but most preferred a change in terminology as they felt that “interview” implied they were seeking specific information from a child via a question/answer format. They felt that the term “interview” was not reflective of the two way interaction they encourage with the child. The term “meeting” was preferred by 44% of Judges. Five Judges (9%) liked the term “conversation” although many others felt that such a term was inappropriate and too informal. A small number of Judges preferred the term “discussion”.

*L: Conclusions of Survey*

Professors Caldwell and Taylor concluded that the findings of their 2012 survey of 100% of New Zealand’s Family Court Judges confirmed the trend ascertained by Professor Caldwell in the period since his first survey in 2006; of increasingly positive attitudes towards Judicial interviewing and greater use of it.

The interview with each Judge concluded by the interviewer asking the Judge what, if any, advice the Judge could offer their colleagues either within New Zealand or internationally. Some Judges felt it would presumptuous of them to offer any advice, but the majority emphasised the need for a clear purpose to the meeting with the child. In the New Zealand context the Judges were assisted because of the statutory obligation under s 6 of the Care of Children Act. They indicated that the meeting was not a “forensic” interview but an opportunity for a child to express views on matters affecting them.

The authors reported that a minority of Judges felt that Judicial interviewing was burdensome and risky because it could place the child at the front line of the dispute. Most Judges were enthusiastic in their encouragement of Judicial meetings and highlighted the benefits for the Judge, the child and the decision making process.

**PERSONAL OBSERVATIONS AND THOUGHTS**

*Introduction*

Given no New Zealand statute provides any legislative prescription as to whether, when or how children’s views/wishes be obtained, the issue is left solely to individual Judicial discretion in all respects.

Such is the immense diversity of circumstances within family dynamics and family law cases, that a ‘one size fits all’ approach would unlikely accommodate the interests and welfare in children when unique situations arise.

While the lack of any statutory prescription does carry disadvantages (such as Judicial diversity of approach, scope for individual subjectiveness and uncertainty for Court users), it does mean that the concept of Judicial meetings/interviews is developing in a manner which permits Judges to observe others, adopt some practices, but choose not to follow others. There is a healthy aspect deriving from that Judicial independence. Above all, that retention of judicial independence does mean that Judges can adopt different approaches where unique cases appear.

Because the issue of Judicial Meetings is left to the discretion of each individual Judge, any thoughts, considerations or suggestions I present in this section are my alone. They certainly do not represent the position of other Judges in New Zealand or those of our Head of Bench.

I canvass a variety of considerations not to advocate any particular approach, but rather to highlight the need to always remain vigilant to the individual needs and circumstances of each family and each child insofar as those needs and circumstances may actually be ascertainable and how they might better inform the style of approach.

I commence this section with a real example, one which has caused me to be very cautious as to how to consider meetings with children and has reinforced my concern where prescriptive approaches are advocated.

*A Cautionary Tale*

As with any protocol or guideline I cannot emphasise enough the vital importance of not approaching matters on a formulaic and potentially predetermined approach, as can often occur when protocols or guidelines take on a level of application beyond what they were intended. They ought only ever to be guidelines and must always be subject to a cautious and careful assessment as to how they might, or might not, be appropriate to the given circumstances before the Judge. The following provides a tangible example of how an overly enthusiastic approach by a Judge can in fact be counterproductive and expose the child to a real potential of harm.

When the debate about child interviews was at its height in New Zealand some five or more years ago, a number of Judges took the view that recording of the child and playing back of the audio recording was a given. Such form of rapid and enthusiastic adoption of a fixed process carries with it potentially significant risks for children.

In a case, which I will attribute the fictitious name of *Pearson v Maxted*, a situation arose which provides cogent proof of the risks that can arise where a fixed approach is taken. A senior Family Court Judge formed the view that it was essential that in all cases any interviews with children would be audio-recorded and played back to the parents, or at the very least a transcript be provided prior to conclusion of the hearing. He embarked upon this process in this case. It appears that little prior consideration had been given to the particular characteristics of the parents, or any risk they may have posed to the emotional safety of the children. Indeed, often the decision whether or not to interview, and how to do it, is taken some time before the presiding Judge has ever had opportunity of meeting and observing the parties or even before they have read the full pleadings.

Some months later I presided over a subsequent hearing between these same parties, wherein it was disclosed in the evidence that some time prior to the Judge’s interview with the children, Mr Maxted had been assaulted by the mother’s partner. He complained to the police, who took photographs of injuries to his face. He saw fit to have large copies of the photographs made and had pleasure in showing his children the photographs to reinforce his extremely negative view of the mother. Given that this man disclosed himself to be a person who had no capacity to separate his own emotional difficulties from the emotional needs of his children, it was highly probable that he later discussed with the children everything he had heard from the Judge’s recording of the interview. Although the Judge could not then have known about the incident with the photographs, there was abundant information available on the large Court file to raise alarm bells regarding the wisdom of permitting this parent to actually hear what his children told the Judge. In a situation such as this it would, I suggest, have been eminently safer to have simply conveyed to the parents a paraphrased summary of the children’s thoughts, and certainly nothing that was almost certainly likely to be later discussed with them.

That case serves as a strong tangible lesson of the absolute need to assess every single case according to what is known of the parties concerned prior to making a decision as to whether or not to interview, how an interview might be undertaken and in turn what, if anything, of what has been said by the children should be disclosed to the parents and how disclosure ought to be made. It is an example of the risks that follow a prescribed approach based upon notional assumptions of “best practice”. A rigid protocol can carry a consequence of hiding specific risks of the case from that Judicial Officer.

Adherence to the natural justice rights possessed by the adult parties to a proceeding carries the consequence that whatever a child discloses in an interview could never be guaranteed absolute confidentiality. At best, it will be the level to which the child’s disclosures might be conveyed to the parents which a Judge will need to consider. It will be a rare case indeed where everything the child has said must be kept away from the parents.

This lack of confidentiality of the child’s statements almost guarantees that the moment a Judge decides that he or she is going to record the interview and disclose the record (where the transcript, audio or both) to the parents, a risk to the child will have arisen. Experiences and events such as that perpetuated by Mr Maxted might support an approach whereby the Judge should indicate in advance of hearing that it is possible he or she may leave any decision to meet until further into the proceedings when much more is known of the parents. While some logistical disadvantages would arise, it is difficult to argue against the proposition that the emotional safety of the children would be better protected if the decision to meet is left until the Judge is well informed as to the character of the parties.

My strong word of advice is – do not actually predetermine how you will interview the child or disclose the contents of the interview until you are possessed of as much information as possible as to the parental attributes of the parties. To do otherwise will inevitably place the welfare of the subject child in jeopardy of being compromised.

*Interview or Meeting?*

Many observers, whether Judges, lawyers or academics, often refer to the communications between a Judge and child as either a ‘meeting’ or an ‘interview’. No statute refers to either form of interaction. The words may be chosen with or without much thought. The difference may seem innocuous, but I suggest there is a significant difference between the two, one which will shape the manner of any Judge/child interchange.

An ‘interview’ is variably defined as; a conversation or questioning of a person, a formal discussion, a meeting of persons face to face, esp. for consultation, question to discover the opinions or experience of a person. By its very nature an interview carries formal connotations. Any Judge approaching their communication as an ‘interview’ is therefore more likely, I suggest, to consciously or sub-consciously, prepare, conduct and respond in a more formal manner that a ‘meeting’.

A ‘meeting’ means an assembly of people for entertainment or discussion, an encounter of people by accident or design, make the acquaintance of. Much less formal connotations arise.

I suggest it is important that any Judge considering whether to have a conversation with a child needs to give careful thought to the purpose of that interaction, the degree of formality of it and such like. No rigid approach ought to be taken and each case should be approached on its individual circumstances as best known to the Judge at time of decision.

*Request to Meet*

Be cautious in observing where the request to meet comes from. Anecdotal only – it seems to me that certain lawyers are more likely to request meetings/interviews than others. Ask – is it coincidence, or is it more about them, their subjective personal approach or needs. This assessment is easier in smaller cities where the Judge likely knows most counsel.

The converse also applies in that some lawyers never request that their child client meet with a Judge. When a proceeding is being set down perhaps the Judge should consider whether the circumstances indicate that he/she should arrange a meeting regardless of whether a request has been made.

Similar caution is required in considering whether the child actually wishes to meet in the first place. If in doubt, ask the child’s lawyer from where the driving force of the request might derive.

*Respect Child’s Degree of Dialogue*

It is important to respect, absolutely, the child’s right to tell you as little, or as much, as they like. Do not assume the meeting has actually been requested by the child. There can be a number of factors at play, ranging from; influence by parents, siblings or other family members or from the child’s lawyer. The child may not actually want to meet the Judge and might be quite confused as to what this is all about.

I have encountered rare situations where I have been asked to meet a child and where the child has hardly said ‘boo’ in the meeting. While I might gently encourage the child to take opportunity of talking to me or asking questions, I have not pushed the child into that.

*Introductions*

I seldom take a formal approach in meetings with children. I much prefer a ‘meet and greet’ approach and let matters develop from there. I refrain from entering the meeting with a preconceived plan to ‘interview’ the child on specific matters. Obviously I prepare for possible issues that might arise, but not as to the degree of dialogue. I try not to give any hint as to anything I may be ‘looking for’. This is for the reason I regard the interchange as simply a meeting, one supposedly initiated by the child (but sceptically cautious as to the agenda of others).

I may spend considerable time simply talking to the child, building rapport, asking about school, personal interests, their relationship with siblings or friends. By doing this a rapport is quickly built whereby the child knows I am interested in them. In almost all cases this approach leads the child to quickly relax and often they will open up as to everything they want to tell me or feel they have to, without the need for one question from me.

Sometimes the meeting will end without me having asked anything about the case and where the child hasn’t said anything. In some situations I have noted the child’s lawyer, sensing the meeting will close, chimes in and tries to encourage the child to tell me something the child has told the lawyer (which inevitably has already been recorded in the lawyer’s report to the Court). This indicates to me that the genesis for the meeting has generally been driven by the lawyer than the child.

*What does Child Know about the Case?*

Once a rapport has been established, I will generally try and establish what level of knowledge the child has of the Court case. I do this in order to gain an appreciation of the parameters of the child’s knowledge and understanding of what this is all about. This can assist in assessment of maturity and the weight which might later attract to any child disclosure. The establishment of rapport can inform the approach I will take to the meeting, should it continue to be a general chit-chat or should I formalise matters by more targeted issue orientated questions? It depends.

Often the child knows very little, sometimes they know too much and it will often be identifiable from where this knowledge has derived and for what purpose.

*What is Purpose of the Meeting?*

The Judge may wish to ask the child – ‘why is it that you want to meet me?’ Sometimes the answer may surprise– Dad, Mum or my Lawyer told me I had to. That will often shape how deeply you may want to approach matters. The answer may indicate simple curiosity, or hint at influence by an adult.

The child may say that they just wanted to see what Court was like and to meet a Judge. Fine with me, it is after all the child’s world that we are about to make decisions about.

In other situations children will say they want you to help bring all the fighting to an end. I am very candid with kids and will often say I have remarkable skills but don’t have a magic wand to make adults behave. I will tell kids that I will do the best I can, and I will.

*Does Child have any Questions*

Towards the end of the meeting I will often ask the child whether they want to ask me any questions. I emphasise for them that it is not all one way traffic. I will tell them that if I can answer their question, I will, but if I cannot then I will tell them why not.

*Sibling Groups*

Caution is required to joint meetings with sibling groups. Unless I have been absolutely caught out by the surprise appearance of 4 siblings at the start of a one day hearing where no meeting was ever flagged or requested (meaning real pressure of time), I would never conduct just a joint meeting without also meeting children individually. Why? The dynamics between children in a group as opposed to individually can be significantly different. Different sibling power and control dynamics might suppress a child from uttering a word in the group, yet open up when met alone.

There is immeasurable benefit in first meeting the sibling group for a ‘meet and greet’. One can observe if it is one or more of the siblings calling the shots, who sits back in a reserved fashion and then cross-check the information received when you then break for individual meetings. Often the same child will tell you something quite different away from the group, or explain for you why a sibling said or behaved in a certain way. Sometimes the lone sibling will negate what the other more dominant sibling has expressed on their behalf in the group setting a few moments earlier

*The Pressure of Time*

The availability of time sufficient to conduct meetings without a sense of pressure is vital. To ensure sufficient time is actually available on the day requires careful advanced warning and planning.

In our region a Judge developed a very useful Pre-Hearing Checklist which incorporates questions as to whether any party has requested a meeting with the Judge and child, reasons for the request and an estimate of time for the meeting. By having this information the Judge has a reasonable appreciation of matters of timing and can direct the Registrar to ensure the estimate is built into the fixture time allocated.

*The Ideal World*

The decision when to meet is largely determined by Court workload pressures, the fact that cases are generally backed up, with very little flexibility in the roster. This is especially so in smaller Courts where there is a sole Family Court Judge who cannot easily change arrangements to accommodate. As indicated from *Pearson v Maxted* the decision as to the nature of the meeting, the level of recording and degree of subsequent disclosure to parents is intrinsically linked to the level to which the Judge knows the qualities of parents, or lack thereof.

In an ideal world my preference for the whole process of meetings would be;

* When the first request for a meeting is made I would wish there to be sufficient time for me to read the complete file, peruse LFC’s reports and any psychological reports. I would be looking for indicators as to the characteristics of the parents, reasons for the request to meet and from where the request derives,
* That knowledge would shape decisions as to the best time for the meeting, whether it was likely to be a meet and greet or a more formal situation, whether I would record the meeting and the degree and type of any disclosure to the parents,
* As an ideal I would prefer to hear the evidence of the parents before deciding whether I will meet the child, and before deciding as to disclosure to parents and the mode thereof. If I the elected to meet the children, I would permit chance for further reply evidence if the issues so demanded. Otherwise matters could be accommodated in submissions. However, this ideal is most often unable to be accommodated in practice simply because of resourcing issues and caseload pressure,
* I would not have a psychologist sit in on my meetings, let alone lead the discussion. The New Zealand Family Court is not a tribunal/panel situation and while that remains the case there is a real danger that permitting psychologists to involve themselves in the meeting process dilutes the ultimate legal role of the Judge.
1. Family Courts Act 1980, s 4 [↑](#footnote-ref-1)
2. Children, Young Persons and their Families Act 1989, s 433 [↑](#footnote-ref-2)
3. Family Courts Act 1980, s 11 [↑](#footnote-ref-3)
4. Care of Children Act 2004, s 77A [↑](#footnote-ref-4)
5. Ibid, at s 28 [↑](#footnote-ref-5)
6. Relationship (Property) Act 1976, s 26 [↑](#footnote-ref-6)
7. Ibid, s 37A [↑](#footnote-ref-7)
8. Domestic Violence Act 1995, s 2 [↑](#footnote-ref-8)
9. Care of Children Act 2004, s 8 [↑](#footnote-ref-9)
10. Children, Young Persons, and Their Families Act 1989, s 2 [↑](#footnote-ref-10)
11. For instance, Property (Relationships) Act 1976, s 26 [↑](#footnote-ref-11)
12. Age of Majority Act 1970, s 4(1) [↑](#footnote-ref-12)
13. Parliamentary Debates (04 December 2012) 686 NZPD 7028;

References made to the bill targeting court’s resources towards vulnerable children by replacing the previous safety assessment with “a more flexible and proportionate response”

The introduction to the Regulatory Impact Statement confirmed that urgent steps were required to lower the cost of the current justice system [↑](#footnote-ref-13)
14. Care of Children Act 2004, s 7 (from 18.5.09 until 31.3.14) [↑](#footnote-ref-14)
15. *W v W* [Custody] [2005] NZFLR 1126, at [14] and [17] [↑](#footnote-ref-15)
16. Recognising “The Real Thing” used for 1970’s Coke advertisement ©Johnny Young, recorded by Russell Morris 1969 [↑](#footnote-ref-16)
17. Care of Children Act 2004, s 5A [↑](#footnote-ref-17)
18. Care of Children Act 2004, s 7 (post 31.3.14) [↑](#footnote-ref-18)
19. CYPFA, s 159 [↑](#footnote-ref-19)
20. CYPFA, s 323 [↑](#footnote-ref-20)
21. Family Courts Act 1980, s 9B [↑](#footnote-ref-21)
22. *Surrey v Surrey* [2010] NZFLR 1 [↑](#footnote-ref-22)
23. Domestic Violence Act 1995, s 29 [↑](#footnote-ref-23)
24. Family Proceedings Act 1980, s 162 [↑](#footnote-ref-24)
25. Family Proceedings Act 1980, s 162(2) [↑](#footnote-ref-25)
26. *K v K* [2005] NZFLR 28 at [91] and [92] [↑](#footnote-ref-26)
27. Ibid, at paragraph [89] [↑](#footnote-ref-27)
28. *C v L* HC Auckland, AP 115-SW02, 6 March 2003 [↑](#footnote-ref-28)
29. *Brown v Argyll* [2006] NZFLR 705, at [47] [↑](#footnote-ref-29)
30. *T v Chief Executive of CYFS* [2007] NZFLR 143, at [32] [↑](#footnote-ref-30)
31. *B v DSW* (1998) 16 FRNZ 522, at 527 [↑](#footnote-ref-31)
32. *C v S [Parenting orders]*[2006] NZFLR 745 [↑](#footnote-ref-32)
33. *Loffley v Vuletic* (1992) 8 FRNZ 508 [↑](#footnote-ref-33)
34. *LJG v RTP* *[Child Abduction]* [2006] NZFLR 589 [↑](#footnote-ref-34)
35. *C v L* (Harrison J High Court Auckland AP 115-SW02 6 March 2003) [↑](#footnote-ref-35)
36. *JRW v EW* (High Court Dunedin CIV 2006-412-720, 16 October 2006) [↑](#footnote-ref-36)
37. “Judicial Interviews of Children – Some Legal Background” (2007) 5 NZFLJ 215 [↑](#footnote-ref-37)
38. *R v R* [2003] NZFLR 200 [↑](#footnote-ref-38)
39. *T v Chief Executive of the Department of Child Youth and Family Services* [2007] NZFLR 143, at [36] [↑](#footnote-ref-39)
40. *W v N* [2006] NZFLR 793, at [63] [↑](#footnote-ref-40)
41. *J v M* (Family Court, North Shore, 2004-044-1857, 20 April 2005) [↑](#footnote-ref-41)
42. *C v S* *[Parenting Orders]* [2006] NZFLR 745 at [31] [↑](#footnote-ref-42)
43. “Children’s Views and Participation in Decision‑making” (2006) 5 NZFLJ 183 [↑](#footnote-ref-43)
44. “Judges are Human Too – Conversation between Judge and a Child as a Means of giving Effect to section 6 of the Care of Children Act 2004” – [2006] NZ Law Review 35 [↑](#footnote-ref-44)
45. “Conversations with Children; a Judge’s Perspective on Meeting the Patient before Operating on the Family” (2008) 6 NZFLJ 72 [↑](#footnote-ref-45)
46. Judicial Meetings with Children: Documenting Practice within the New Zealand Family Court – [2013] New Zealand Law Review 445 [↑](#footnote-ref-46)
47. Natural Justice and Judicial Meetings with Children: Documenting Practice Within the New Zealand Family Court (2013) 7 NZFLJ 264 [↑](#footnote-ref-47)
48. Above n 42 [↑](#footnote-ref-48)