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Children's voices in the family justice system — hearing children's views before making life-changing decisions for them

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This article examines whether children in Aotearoa New Zealand currently receive adequate opportunities to participate and have their views heard when decisions are being made for them under the Care of Children Act 2004. It begins by outlining why it is indeed important that children's views are heard and then examines the reasons why this is not always happening in practice, both in Family Dispute Resolution and the Family Court. The article recommends the establishment of a new role, separate from that of lawyer for child; its specific focus being on ensuring children are truly able to express their views and be heard within the family justice system. The article goes on to outline what such a role would entail and examines how it could be incorporated into both Family Dispute Resolution and the Family Court to ensure children's voices are indeed heard in both settings.

Introduction

Change can generate feelings of uncertainty and fear in all of us, adults and children alike. As adults, when we face change, whether that be in the workplace or in our personal lives, we expect to be part of the decision-making process. We like to have a clear understanding of how any changing circumstances may affect us, and have an opportunity to express our views, with the understanding that those views may have a bearing on how the changing circumstances are then enacted. For children, major change, such as where and with whom they live, can occur when care and guardianship decisions are made for them under the Care of Children Act 2004.[1] This article examines whether the family justice system in Aotearoa New Zealand currently provides children with adequate opportunities to participate when decisions are being made that can result in major changes to their lives. The article explores whether children are given an opportunity to express their views about those changes, with an understanding that those views, while not determinative, may have a bearing on the outcome. Just as adults expect to be part of decision-making processes when they face change, this article will explain why it is important children also receive the opportunity to participate when decisions are being made for them and will examine whether this is currently happening in practice. Recommendations are then made on how to improve children's ability to have their views heard before major decisions are made for them. Ensuring a child's views are heard, especially when that child faces change to the main structure that sustains them — their family unit — is something the family justice system needs to ensure for every child.

Hearing a child's views and allowing them to participate — what that involves

For a child to be able to express their views before a major decision is made for them, they must be given the opportunity to "participate". The word "participate" is used here as it encompasses more than simply asking a child for their views. The right to participate requires a child to be informed of the relevant facts, in an age-appropriate manner, so they can form their own views. The first element of this is that the child needs to know why their views are being sought and understand what their options are, so they can decide whether they wish to participate or not.[2] A right to participate also requires the creation of a safe environment, and that the adult charged with hearing the child's views is capable of communicating with the child in both an age and culturally appropriate manner.[3] Participation allows space for a child to express their own views and potentially formulate their own solution, which may be one the decision-making adults have not considered. While the views a child expresses will not be determinative, they should be considered all the same. Once a decision has been reached, participation also includes clearly explaining the outcome to the child.[4]

Why children's views should be listened to before making care and guardianship decisions for them

Practical life-enhancing reasons

When asking why children should be listened to before life-changing decisions are made for them we should first and foremost remember that these decisions are primarily about the child's life, and recognise that children are their own people, with their own views and outlooks on life.[5] It is important to recognise that a family can look different when viewed through a child's eyes and a parent's eyes.[6] What is important or troubling to a parent will frequently by quite different from what is important or troubling to their child.[7] How each experience the same family dynamic will also be different. No matter how understanding and caring a parent is, they do not see the world through the same eyes as their child.[8] Acknowledging this means recognising the views of the child as being important in their own right. A child may have views, that once heard, could make a care or guardianship option untenable or simply wrong, and another solution will be required. When combined with the fact that a decision regarding a child's care and guardianship is one that will primarily affect the child, it becomes clear that ensuring a child has had the opportunity to express their views is necessary to ensure the best possible decision is made for that child.

Some people may not want their child to participate when care and guardianship decisions are being made for them. This can be in an effort to shield their child as much as possible from any potential conflict arising from the situation.[9] While this desire to shield a child is understandable, it can mean a child does not receive age-appropriate explanations about how and why their care or guardianship arrangements are changing. This can lead children to reach their own incorrect conclusions about why this is so. Instead, children who have had the appropriate information explained to them, in an age-appropriate manner, are given the opportunity to form their own views based on accurate facts. It has been found that children who have the correct facts and are included in decision making are "less likely to blame themselves for the parental separation and [are] less likely to experience feelings of guilt and responsibility".[10]

Another practical, positive reason for ensuring children are given the opportunity to express their views, and contribute to decisions that will affect them, is that the result is likely to be "more workable arrangements" that children are happy living with.[11] If a child, in particular an older child, has not had this opportunity and is unhappy with a decision imposed upon them the decision may simply become unworkable with the child refusing to comply with the decision.[12] Various studies have shown that in addition to the actual outcomes being better for children, if their views are heard, they are also likely to adjust quicker and cope better when change that occurs.[13] New Zealand research that focused on children involved in the mediation process, following their parents' separation, concluded that "children were more relaxed and had adapted significantly better to their new situation after having been given the opportunity to have a 'voice'".[14] It should be noted that while children want to contribute to decisions that will affect them, this does not mean they want to be the decision-maker. Rather, knowing their views have been heard and will be considered in the decision-making process is often what is most important to children.[15]

Not only is listening to children's views likely to lead to better outcomes for children, but it has also been shown to be better for a child's confidence and general mental health. Children have reported feeling respected and cared for when their views are listened to and taken into account.[16] Conversely, children can be left feeling excluded and disregarded if they do not receive an opportunity to express their views about the decision that will affect them.[17] Even the aspect of participation that ensures a child is informed of the relevant facts can reduce a child's anxiety at a time when there can be a lot of unknowns and uncertainty for them.[18] Judge Boshier has commented that including children and hearing their views can help give them some "sense of control over their lives, which will be good for their psychological and emotional well-being".[19]

As has been outlined, the benefits of a child expressing their views on matters that will affect them, when decisions regarding their care and guardianship are being made, are numerous. This needs to be carried out in a way that protects a child from any potential risks, including causing them anxiety or raising loyalty conflicts.[20] However, not allowing their participation can cause other harm as outlined above, including feelings of guilt or responsibility, and feelings of exclusion and anxiety. The fact that better outcomes may be reached once a child's views have been heard and considered, and that a child is more likely to adapt quicker to the changes they face, means hearing their views is indeed an important part of the decision-making process. The additional positive benefits that hearing a child in these cases is also better for that child's confidence and mental health, makes it imperative that the family justice system ensures children are indeed given the opportunity to participate and express their views at all stages within the family justice system, when care and guardianship decisions are being made for them.

The legal requirement that children's views be heard before making care and guardianship decisions for them

In addition to these practical benefits of listening to children's views before making decisions for them, it is also important to remember that s 6(2)(a) of the Care of Children Act requires that children "must be given reasonable opportunities to express views on matters affecting the child".[21] The inclusion of this statutory requirement, within the Care of Children Act, can largely be attributed to the United Nations Convention on the Rights of the Child (the UNCRC), which New Zealand ratified in 1993.[22] Article 12 of that international convention reads:[23]

> 1 States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
> 2 For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or appropriate body, in a manner consistent with the procedural rules of national law.

By ratifying the UNCRC, New Zealand embraced the overarching principle of the Convention, that children are not just objects who belong to their parents, but rather that each child is an individual human being, with their own rights.[24] In order to give effect to the Convention, New Zealand had to ensure domestic law and policy adhered to the Convention.[25] The Care of Children Act, which was drafted following the ratification of the UNCRC, was influenced by art 12 of the UNCRC. Section 6 of the Care of Children Act partly incorporated art 12 by requiring that "a child must be given reasonable opportunities to express views on matters affecting the child; and any views the child expresses ... must be taken into account".[26] However, it is important to note that to date, New Zealand has not enacted a piece of legislation that fully incorporates the UNCRC into domestic law and that several of the art 12 requirements are not currently incorporated by the Care of Children Act. In particular, the art 12 requirement that children can "freely" express their views and that children must be heard in all administrative and jurisdictional settings are not specifically included in the Care of Children Act. Given art 12 has not been fully incorporated into domestic law, New Zealand courts have not needed to specifically enforce art 12 in relation to the Care of Children Act. However, in a recent development that recognises the importance of art 12, s 6 of the Family Court (Supporting Children in Court) Legislation Act (FC(SCC) Legislation Act), which came into force on 16 August 2023, has inserted before s 6(1) of the Care of Children Act, the following subsection:[27]

> (1AAA) The purpose of this section is to implement in New Zealand Article 12 of the United Nations Convention on the Rights of the Child.

While this section does not fully incorporate art 12 into the Care of Children Act, the addition of this section means that New Zealand courts are being encouraged by Parliament to interpret s 6 consistently with art 12. This section has given New Zealand

courts greater licence to refer to art 12 when interpreting s 6 of the Care of Children Act. Hence the courts may examine other aspects of art 12, not incorporated by s 6, such as whether a child has had the opportunity to express their views freely and whether those views have been given due weight in any judicial or administrative proceeding affecting them.

In 2023 the Family Court (Supporting Children in Court) Legislation Act also inserted s 5(g) into the Care of Children Act. This subsection states "a child must be given reasonable opportunities to participate in any decision affecting them".[28] Again, while this section does not further incorporate art 12 into the Care of Children Act, it does show Parliament is further recognising the importance of ensuring children have an opportunity to participate in decisions that affect them. Osborne J in the High Court said this section "is an extension of s 6(2)(a) of the Act which states the child must be given reasonable opportunity to express views on matters affecting the child".[29]

The current New Zealand situation

While the life enhancing practical reasons discussed above establish why children should be heard before life changing decisions are made for them, the reality is that this does not always happen in practice. *Te Korowai Ture ā-Whānau*, an independent report published in 2019, highlighted that children within New Zealand's family justice system are limited in their ability to participate when issues affect them.[30] It suggested that a child's right to participate in decisions that affect them is not "widely recognised or valued" in New Zealand.[31] It also stated that child inclusive practices have developed "in an ad hoc way" and recommended that "a stocktake of appropriate models of child participation" needs to take place.[32] Research recently published by the Children's Issues Centre likewise raised concerns that children are not being provided adequate opportunities to be heard when decisions are being made about them in the family justice system.[33] In addition, the latest observations made by the United Nations Committee on the Rights of the Child, in relation to New Zealand's adherence to the UNCRC, has specifically recommended that New Zealand needs to "ensure children [have the] right to have their views heard in all official decision-making processes relating to children, such as custody cases".[34]

A recent analysis by the author of the current legislation showed that, while the Care of Children Act requires that a child be heard when decisions are being made that will affect them, there are gaps in the legislation, and misunderstanding by some working in the family justice system, that means on a practical level children's views are not always heard.[35] In order to examine this further it is important to consider each setting within which these important decisions for children are made.

Are children heard in Family Dispute Resolution (FDR)?

Family Dispute Resolution (FDR) is currently a mandatory step that most parents or guardians must undertake (some exemptions withstanding) before the court will determine any care and guardianship decision for a child.[36] Yet despite being a vital part of the family justice system, in which important care and guardianship decisions are made for children, there is currently no guarantee or clearly established system that ensures children's views are listened to as part of the FDR process. Until recently, FDR providers were required to ensure a child's voice was represented in the mediation process, but they did not have to seek direct input from the child themselves.[37] The most common means of representing a child's voice was by discussing the child's thoughts, feelings, and views with the parties involved in the mediation.[38] In August 2023, s 11(2)(ba) was inserted into the Family Dispute Resolution Act 2023, requiring that children "who are the subject of the dispute are given any reasonable opportunities to participate in the decisions affecting them" by FDR providers.[39] While this is progress for child participation in FDR, the way in which s 11(2)(ba) has been drafted unfortunately does not guarantee all children the right to participate because the section goes on to state that a child is only granted this opportunity to participate when "the FDR provider considers [it] appropriate".[40]

To ensure all children receive the opportunity to be listened to, before decisions are made regarding their care and guardianship during the dispute resolution stage, this qualifier, that the FDR provider must consider it appropriate for the child to participate, needs to be removed from the legislation. No such qualifier exists in s 6 of the Care of Children Act, and if safe, clear procedures are established, there is no reason why every child capable of expressing their view, should not be given reasonable opportunity to have their views heard at FDR. The right of the child to be heard should not be contingent upon an adult considering it appropriate for them to do so in any given case.

Are children heard in court?

While s 6 of the Care of Children Act sets out that "a child must be given reasonable opportunities to express views on matters affecting the child", there is currently no statutory pathway that guarantees that every child capable of forming a view, will have their views heard before a decision is made for them in court. Firstly, there is no legislative provision in New Zealand that expressly provides a child can meet with a judge and express their views directly to them. It is also questionable if judicial interviews in their current form truly provide an opportunity for a child to express their views to the judge. For some children, the thought of meeting "the judge" and the judicial environment may be too intimidating for them to be able to freely express their views.[41] In addition, a study conducted in 2012 suggested that many judges did not consider the purpose of an interview with a child was to "elicit the child's views", but rather, was an opportunity for the judge to "meet and greet" the child and explain the judicial process to them.[42]

Another option is for a child to express their views to their lawyer, who then has a duty to communicate the views that are "relevant to the proceedings", to the court.[43] While s 7 of the Care of Children Act makes provision for the appointment of lawyers to represent children, such an appointment is again not guaranteed to every child whose care or guardianship issue will be determined in court. The 2014 amendment to the Care of Children Act means the Court need only appoint a lawyer to represent a child in cases where the court "has concerns for the safety or well-being of the child".[44] While a recent study evaluating this change to the legislation suggests that the initial fears that the courts would appoint fewer lawyers for children does not appear to have eventuated, figures obtained from the Ministry of Justice's Case Management System show that not all children are appointed a lawyer in care and guardianship cases.[45] Between 2016–2019, on average, a lawyer for child was appointed in 84 per cent of Care of Children Act proceedings.[46] This does not necessarily mean that 84 per cent of children received the

right to express their views to the lawyer appointed to their case as this data does not clarify if lawyers always sought the views of each child in cases where more than one child was involved in a proceeding.

When considering whether children truly receive an opportunity to express their views to the court, it must also be asked if the current form of representation, the lawyer for child, is the best form of representation for children. While a lawyer has good understanding of court procedures and is trained in presenting the appropriate information correctly to the court, the truly relevant question is whether a lawyer is sufficiently trained to allow a child to express their views in the first place. Many submitters raised concerns about this when submissions were called for regarding the FC(SCC) Legislation Act.[47] Areas of particular concern were whether a lawyer for child has adequate training in child development and child psychology, and whether they are able to engage and communicate effectively with children, especially children from diverse backgrounds and children with disabilities.[48] There was also concern about whether a lawyer for child has adequate training when working with children who have experienced sexual or family violence.[49]

A 2020 study conducted by the Children's Issues Centre showed most New Zealand family justice professionals believe the lawyer for child role is working well, that it allows for a neutral representation of children and gives children a voice.[50] However, a minority (nine per cent) of professionals acknowledged that lawyers for children are at times not adequately equipped for the role, that they lack experience with children, or do not spend adequate time with children.[51] Interestingly, 54 per cent of the professionals surveyed in this study identified that they personally would like more training in how to engage with children and/or how to better ascertain children's views, and 51 per cent wanted further training in cultural competency.[52] The section of the study that summarised parents' and caregivers' responses to the survey revealed that 47 per cent of parents and caregivers thought that the appointment of a lawyer for their child had been unhelpful or ineffective.[53] The main reasons given for this were that the lawyer for child had failed to establish rapport and trust with their child and had not listened to their child. Only 30 per cent of parent and caregiver responders to this study thought the role was helpful, indicating they liked the fact that the lawyer for the child was independent and focused on the child's best interests and views.[54]

Another factor that excludes or limits some children's views from being heard is a lack of understanding by some family justice professionals around when a child should be given the opportunity to express their views. An examination of recent case law reveals examples of younger children not being given the opportunity to express their views because they are not considered capable of forming a view, or their views are not sought because the professionals working with these children predetermine that the child's views will not carry any significant weight when the decision is being made.

In *GF v EF*, Fitzgerald J in the High Court found that the Family Court had not given a five-year-old child reasonable opportunities to express her views on a possible relocation with her mother.[55] Lawyer for the child submitted that given the child's age it was "not realistic to expect her to fully understand and accordingly give views on the relocation which [could] be given any significant weight".[56] However, Fitzgerald J in the High Court "carefully considered" the views the girl gave prior to the appeal and acknowledged it was important that her views were sought.[57] She noted that although the child's views did not alter the outcome in this case, they could potentially have carried some weight. She gave, by way of an example, a fear of any of the people she would be living with following relocation.[58] Fitzgerald J's judgment recognised young children can hold valuable insights into their own world and are capable of holding their own views. She said that s 6 of the Care of Children Act had been breached by not giving this five-year-old child "a reasonable opportunity to express her views on relocation".[59]

Carter v Scott is another case appealed to the High Court, one of the grounds of appeal being that the Family Court Judge had not had the benefit of hearing a young four-year-old child's views regarding his day-to-day care arrangements.[60] Lang J in his High Court judgment dedicated three paragraphs to outlining the child's views, which had been sought, prior to the appeal.[61] By doing so he demonstrated that this four-year-old was indeed capable of holding views and gave those views credence by including them in his judgment in such detail. These two cases raise concern about how often young children's views are not sought and go unnoticed because an appeal is not brought that highlights the omission.

Such cases do raise the question: when is a child actually capable of holding their own views? The UN Convention on the Rights of the Child General in General Comment No 12 has noted that "research shows that the child is able to form views from the youngest age, even when [they] may be unable to express them verbally.[62] They went on to note that "non-verbal forms of communication [such as] play, body language, facial expressions and drawing" can all be ways in which young children can express their understanding and preferences.[63] They also clarified that children who experience difficulties in communicating, either due to a disability, or an inability to speak a majority language are not rendered incapable of forming a view. In such situations the onus is on the adults to equip the child with the necessary modes of communication to ensure they can express their views.[64]

However, this does not mean that capacity to form a view does not come with some qualification. Henderson-Dekort suggests that while there is limited literature around how to assess or understand a child's capacity, there are some essential requirements needed for capacity to be present.[65] Firstly, there needs to be a basic level of understanding and communication. As has been noted, General Comment No 12 stated that communication need not be verbal. Regarding understanding, General Comment No 12 clarified that the child's level of understanding need not be comprehensive, but of a "sufficient understanding to be capable of appropriately forming" their own view.[66] An example involving preschoolers could be that they have sufficient understanding about who cares for them, but they are unlikely to have any understanding of a more complex issue such as vaccination.

An example of this concept being applied can be found in the recent decision of *Hartley v Wood*, where it was held that the views of a five-year-old child did not need to be sought regarding whether they should be vaccinated against COVID-19.[67] Judge Ginnen said this child could not "fully understand the issue or formulate a competent view".[68] A level of practicability does need to be applied in cases where a child is very unlikely to have any understanding of the issue, to be capable of forming a view, as was the case here, of a five-year-old, when the issue was vaccination. However, a broad approach should be taken as to when a child is considered capable of forming a view, so to ensure all capable children are given the opportunity to express any and all views they do have. The intent of art 12 of the UNCRC is that capacity is not something a child should ever have to prove.[69] In *Townsend v Poole*, another COVID-19

vaccination case, Judge Collin ensured the views of an eight and nine-year-old child were sought regarding vaccination.[70] After hearing both children's views, via their lawyer for child, he stated they had limited awareness of the issue. Judge Collin had taken a broad approach as to when a child may be capable of having a view regarding vaccination and had given the children the opportunity to express any views they may have had on the matter, rather than assuming at ages eight and nine they would not be capable of forming a view regarding vaccination.[71]

The two following Family Court cases clearly highlight how the difference in a judge's understanding around a child's capacity to form a view affects whether the child actually receives an opportunity to express their view before a decision is made for them. Both cases involved children whose mothers wanted to relocate to Australia with them. In *Graves v Tonks* the children were described as being under seven and six, respectively.[72] While the Judge acknowledged the court was required to consider the views of the children, he said this is only if views have been expressed. He went on to say that "these children are far too young to appreciate, even in general terms, the options that are before the court".[73] There was no further reference to the children's views regarding relocation. In comparison, in *Wilder v Keith*, where the children were aged 11 and five, Judge Blair met with the children in chambers, prior to the hearing, so they could express their views and perspectives to him.[74] In his judgment he outlined his discussion with the children, including each of their views about the possible relocation. He also clearly outlined the views of each child as represented by lawyer for child, including when the children had been interviewed separately, ensuring both the 11-year-old and five-year-old's views were sought.[75] Judge Blair said his decision that the children should not relocate to Australia was based on the Care of Children Act, s 5 principles, and the children's views.[76] These two cases highlight how a judge's understanding about when a child is capable of forming a view can determine whether that child receives the opportunity to express their view on the matter.

Recent clear directives from the High Court in *Carter v Scott*, and the excellent Family Court case of *Wilder v Keith*, show that many within the legal profession do ensure children, even young children, are given the opportunity to express their views. However, as several of the above cases have also demonstrated, not all legal professionals working in this area are providing all children this opportunity.

In summary, not all New Zealand children currently receive the opportunity to express their views and have those heard when care and guardianship decisions are being made for them under the Care of Children Act. At mediation it is the FDR provider who determines when it is appropriate for a child to participate. If the decision is to be made in the court setting there is no legislative provision that assures a child the opportunity to meet with the judge to express their views directly to them if they wish to, and no legislative guarantee that a child will be appointed a lawyer for child to hear their views and represent them in court. In addition, some professionals in the family justice setting do not always give children the opportunity to express their views on the grounds that they do not perceive the child capable of forming a view about the relevant matter, or because they predetermine that the child's views will not carry any weight. When children do receive the opportunity to express their views, some legal professionals working with children may not have the skills to build the required rapport and trust with a child, that enables the child to freely express their views. There is also concern over whether lawyers have adequate training in working with children from diverse backgrounds and children who have experienced violence. Given each of these limitations, changes are needed to ensure all children can truly express their views when decisions about their care and guardianship are being made in both the FDR and court settings.

Ensuring children's views are heard in FDR and in court

A child focused role

If children's views are to be truly heard by the decision-maker before care and guardianship decisions are made for them in both FDR and court, a role that specifically focuses on ensuring children are enabled to express their views and be heard needs to be established. For the purposes of this article, this proposed role is titled Child Participation Advocate (CPA).[77] A CPA's primary role would be to ensure a child is able to freely express their views, if they wish to do so, when a care and guardianship decision is being made for them, either in FDR or court. The CPA would then ensure those views are heard by the FDR provider, and if the matter proceeds to a court hearing, the judge. A CPA's role would also include explaining the decision to a child and ensuring any ongoing therapeutic help the child may require is in place.

The *Te Korowai Ture ā-Whānau* report noted that "appropriate professional development and experience requirements for practitioners working with children" is a critical issue, yet to be resolved.[78] Specific skills are required to allow children to freely express their views — skills that have a different focus from those many lawyers will have gained and developed, both during their education and professional working life. There have long been queries over whether a lawyer for child is the most appropriate professional to work with a child and provide them the opportunity to express their views.[79] While it is important to acknowledge that some lawyers for children have good skills in this area and do a good job of ascertaining a child's views and presenting these views to the court, lawyers have not received specific in-depth training on how to communicate effectively with children.

At this point it is important to note the eligibility criteria for a lawyer to work in the role of lawyer for child. There is a lengthy list of requirements, including:[80]

> (c) A minimum of five years practice in the Family Court;
> (d) Proven experience in running defended cases in the Family Court;
> (f) An understanding of, and an ability to relate to and listen to, children of all ages;
> (h) Knowledge of the impact of drug and alcohol abuse issues, the dynamics of family violence, child development, disabilities and mental health;
> (i) Understanding of tikanga Māori;
> (j) Sensitivity and awareness of different world views including gender, ethnicity, sexuality, cultural and religious issues for families;
> (k) Relevant qualifications, training and attendance at courses relevant to the role (including continuing professional development);

The prerequisite that a lawyer has worked for five years in the Family Court, will provide them solid experience in how the Family Court operates, but it must be asked if this is necessary for the purpose of seeking a child's views. In stark contrast, the only specific training a lawyer for child must complete that relates to child development, and how to communicate with

children of different ages and from different cultures, is covered during a three-day workshop, provided by the New Zealand Law Society.[81]

Interestingly, in some jurisdictions, the professional tasked with listening to a child's views in care-of-children proceedings need not have legal qualifications or experience. For example, in Scotland, the job of seeking the views of the child and reporting to the court is carried out by a child welfare reporter (CWR).[82] While these people are often practising solicitors, there is no requirement that CWRs have legal training.[83] Some CWRs have other professions, such as teaching or social work. A recent consultation has taken place in Scotland seeking feedback on the requirements someone should be required to satisfy to work as a CWR.[84] Respondents were asked whether they agreed "with the proposed requirements that a person must satisfy in order to be included on the register of child welfare reporters".[85] That proposed list of requirements were:[86]

- communicating with children including obtaining the views of children;
- understanding domestic abuse, particularly the dynamic of coercive control;
- report writing;
- understanding the ways adults can influence a child;
- understanding family conflict;
- child development including learning disabilities; and
- understanding of child protection issues and the child protection system.

The results showed that 69 per cent of the respondents agreed with the proposed requirements.[87] Note that this list did not include legal training, or a minimum number of years spent practising in court. Respondents were also asked to identify any other skills that child welfare reporters should have. Those listed included:[88]

- an understanding of the court system and knowledge of court processes and the procedural aspects of child welfare court proceedings;
- an understanding of parental alienation and to ensure the voice of the child is heard;
- ensuring a lack of bias and a commitment to non-discriminatory practices and the promotion of equality of process; and
- an understanding of children's rights, with a number of references to the UNCRC.

Some individuals also suggested that there be a requirement of a certain degree level qualification or a minimum of five years post-qualified experience before a solicitor could be appointed.[89] However, what appears to be of more value to those who responded to the Scottish consultation was that child welfare reporters have the ability to communicate well with children and have good understanding around child development and issues that may affect the child, such as family conflict and influence.

Likewise, a recent study undertaken in Australia shows that a professional's ability to engage with a child, develop rapport with them, and genuinely listen to them are more important than whether that person is a lawyer or a person trained in social sciences.[90] This study is valuable because it is based on interviews with children about their experiences when expressing their views in family law proceedings. In Australia, children have the possibility of expressing their views to the court either via an Independent Children's Lawyer or a Family Consultant, although not all children involved in family proceedings will receive the opportunity to speak to either. Of the 61 children interviewed for this study, 11 children recalled having met with an independent children's lawyer, and 20 recalled meeting a family consultant, someone with social science training.[91] Many of the children responded negatively regarding their interactions with both their independent children's lawyer and their family consultant, particularly with regards to the professional not really listening to their views.[92] One child described the professional involved as detached and giving the impression of just needing to get the job done.[93] However, some children did have positive experiences with one girl describing her lawyer as genuine and caring.[94] Similarly, a boy described his family consultant as down to earth and patient when it came to him trying to put his views across.[95] The study suggests for a child to be able to freely express their views, the profession of the person listening to the child is not as important as the professional's ability to genuinely listen to the child's views.

For this reason, it is recommended in New Zealand that the role of CPA need not be limited to people from one particular profession. While some people with a social science background may have particularly appropriate skills when it comes to building rapport with and listening to children, a lawyer who has much experience working as a lawyer for child and meets the specific requirement of being able to develop rapport with children and communicate with them in the family justice context, could also work as a CPA. In addition, those with a teaching background could also fulfil the role of CPA, as their skill set could be particularly useful. Given the primary role of a CPA would be to ensure the views of the child are made known to the decision-maker both in FDR and in court, the primary skill requirement for a CPA would be their ability to communicate with children. The current requirement of having five years Family Court experience, that applies to lawyers for children, need not apply to a CPA. Instead, a CPA would require proven experience working with children, a good knowledge of child development, and for any CPA working with tamariki Māori, a good understanding of tikanga. While a CPA need not have a legal background, specific training would ensure they have knowledge and understanding of the family court system and knowledge of court procedural aspects of care-of-children proceedings.

Unlike the current role of lawyer for child, it is envisaged a core group of child participation advocates would be necessary, who would work in this role as their main profession. However, there may also be people who perform the role, in conjunction with another profession. This will be particularly relevant for people with a specialist skillset, who are able to act as a CPA when their skills are needed for communicating with a child who has a particular need, such as a teacher who is fluent in communicating with a deaf child. It is envisioned that the training required to work as a CPA would take approximately three months, with a shortened course available to those who may only work as a CPA when their specialist skills are required. In both cases the essential requirement that a CPA have excellent communication skills with children would be a prerequisite before beginning the course.

What the role of a CPA would entail

The first role for a CPA would be within the FDR context. It is recommended a triage stage, for hearing children's views early in proceedings, be established for all children in New Zealand for whom care and guardianship decisions are being made in the

family justice system. Some overseas jurisdictions, particularly Canada, have demonstrated it is beneficial to hear children's views as early as possible in proceedings. In 2017, research was published about a pilot project that had been carried out in Ontario called a "Voice of Child Report" (VCR).[96] These short, focused reports had the specific aim of reporting a child's views and preferences early on in proceedings.[97] They were prepared by a professional after interviewing a child on two occasions.[98] It was found that many parents had been unaware of their child's exact views prior to seeing the report and once they were given the report, close to half of the parents involved in the trial went on to settle their dispute, as a direct result of the information in the report.[99] The use of VCRs has now been introduced to, and is increasing in use, in several Canadian provinces.[100]

It is recommended that all New Zealand children should have their views heard prior to their parents attending FDR. This should not be dependent on the FDR provider deciding it is appropriate, as s 11(2)(ba) of the Family Dispute Resolution Act currently makes provision for. Rather, a safe system needs to be established that assures every child the opportunity to have their views heard when decisions regarding their care and guardianship are being determined. There would be some exceptions to the general rule that this always occurs before proceedings begin, such as when one parent or guardian applies for an order under the without notice or urgent track.[101] However, even in such cases, a child should still have the opportunity to express their views as soon as possible after the court's initial determination. Ensuring a child's views are heard early in proceedings would help both parents focus on their child, rather than on the dispute they have with each other. Not only would this provide a child with the positive benefits of having their views heard but would also ensure parents are aware of the views of their children, potentially leading to early settlement of their dispute, as was demonstrated often occurs by the pilot project carried out in Ontario, following parents seeing a VCR report.[102]

A safe way to hear children's views at FDR would involve a CPA meeting with a child on two occasions prior to FDR commencing. The main aims of these meetings would be for the CPA to establish rapport with the child, explain to the child why their views are being sought, listen to the child's views, and to identify any big issues that may determine the way the case proceeds. Where possible, the child would be brought to each of the separate meetings by a different parent thereby reducing the risk of the child being coached or influenced immediately before the meeting by the same parent on both occasions.[103] The CPA would then prepare a report for the FDR mediator outlining the child's views and whether the child wishes to participate in the actual mediation. The CPA would then attend the first session of mediation to outline to the parents the views of the child. If the child has elected to participate, they may also attend this session, if both the FDR provider and CPA are satisfied there are no potential safety issues for the child. Some older children may appreciate being able to express their views directly to both parents in a controlled environment. In cases where the FDR provider does not consider it appropriate for the child to participate directly, or the child does not want to participate directly, the child's views would still be heard, and be a focus of the FDR process, because they would be presented to the parents and the FDR mediator by the child's CPA. This would remove the current limitation that s 11(2)(ba) of the FDR Act imposes. While the FDR provider would still have the ability to determine if the child can participate directly, they could not prevent a child's views being heard and presented at mediation by the child's CPA.

It is proposed that the role of a CPA need not be limited to the FDR setting. If an agreement is not reached at FDR, or it is determined that FDR is not appropriate, the CPA would again meet with the child before the case is heard in the Family Court. The CPA would give the child the choice as to whether they want to meet directly with the judge to explain their views to them, or if they want their CPA to present their views to the judge via a report. If the child elects to meet the judge in person, or if having read the CPA's report the judge wishes to meet the child, it is recommended the CPA attends this meeting with the child to support the child. It should be noted that if the court is concerned about the child's well-being or safety, as per s 7 of the Care of Children Act, a lawyer for the child will also be appointed to present the child's best interests to the court.

While the primary reason for creating the role of CPA would be to ensure children's views are truly heard both in the FDR and court settings, establishing this role would also allow the two hybrid roles that the lawyer for child is currently expected to perform, to be separated. Currently, a lawyer for child has a duty, as set out in s 9B of the Family Court Act, to:[104]

> ... 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.

Lawyer for child also has a duty "to ensure that all factors relevant to the child's welfare and best interests, are before the court".[105] Currently, when the child's best interests and welfare, as the lawyer perceives them, conflict with the child's views, lawyer for child has a duty to present both views to the court. This compromises the ability of the lawyer to be a true representative for the child.[106] The new role of CPA would ensure children's views are heard in the judicial setting in their own right. The judge would hear the child's views either directly from the child, or via their CPA. Where the court is concerned about a child's well-being or safety and appoints a lawyer for child under s 7, the lawyer for child's role would be to ensure the court is informed of all factors relating to the child's best interests and welfare. While lawyer for child may still take into account the views of the child when determining what the best interests of the child are, in order to avoid over-interviewing the child, the lawyer for child would use the report of the CPA to ascertain the child's views, rather than interviewing the child themselves. The two separate roles of lawyer for child and CPA would ensure that in cases where the child's views do not align with what lawyer for child determines to be in the child's best interests, both perspectives would be heard independently and without compromise by the court. To achieve this, s 9B(b) of the Family Court Act 1980 would be removed and a new section outlining the role of the CPA, would be introduced.

Establishing the role of CPA in New Zealand would ensure all children's views can be heard in both the FDR and court settings, either directly with the support of their CPA, or via their CPA as their representative. The primary requirements that a CPA be able to develop rapport with and communicate well with children would enable children to freely express their views in each setting.

Training for those working with children

To ensure that children are truly able to express their views when care and guardianship decisions are being made for them, it is essential that all professionals working with children within the Family Justice System receive comprehensive training relating to working with children. As a starting point, CPAs would

need an understanding of why it is important children have the opportunity to express their views and what the "objective for meeting the child and the child's participation" is.[107] Crucially, CPAs would require comprehensive training on how to develop rapport and trust with a child and how to support children in cases where they may need scaffolding to help them express their views.[108] Children may have difficulty comprehending how their family dynamic is changing, and these children need clear, age-appropriate explanations, and support, before they are capable of forming and then sharing their views. It would also be imperative that CPAs have a detailed knowledge of how to allow children to express their views freely. This includes multiple factors such as where the interview is conducted, who is present for the interview, ensuring the child feels both safe and comfortable in their surroundings, and how to provide age and culturally appropriate explanations, as well as ask age and culturally appropriate questions. CPAs would also need training on when a child is in fact capable of forming a view.

Additionally, CPAs would need good understanding of the family court system and knowledge of the court procedural aspects of care-of-children proceedings, with specific knowledge of ss 3, 4, 5, 5A, 6 and 7 of the Care of Children Act. Training would also need to cover factors that may impact a child, such as drug and alcohol abuse issues, the dynamics of family violence and how the child protection system operates, as well as the ways adults can influence a child. In addition to all these requirements it would be imperative that CPAs receive training and are aware of different cultural and religious world views.

It is recommended that the current requirement that a lawyer appointed to represent a child should be suitably qualified to do so "by reason of their personality, cultural background, training and experience" would also apply to CPAs.[109] It is envisaged that for tamariki Māori this could be applied in a very specific way, in that if there is a person from the child's iwi, who has fulfilled the required CPA requirements, they could act as the child's CPA. It is important to acknowledge that the current family court system is very monocultural and "does not align with tikanga Māori".[110] If tamariki are going to have the right to express their views freely in care-of-children proceedings, then a system that respects tikanga needs to be implemented.

In addition to CPAs receiving the required levels of training, it is also recommended that Family Court judges receive further training on when a child is capable of forming a view and why it is important those views are heard, even when they may carry no or little weight in the decision-making. As was highlighted earlier, some children's views are still not heard in court due to some misunderstanding in this area.[111]

Funding the CPA role

Given the current financial environment, it is important to consider how this new CPA role would be funded. As with the lawyer for child role, it is envisaged that parents would contribute to the costs of their child's CPA.[112] The court would consider at the end of a case whether each parent is able to pay one-third of the CPA's fees with the government also contributing one-third. Where a parent is funded by legal aid or where paying the money would cause serious financial hardship a parent may be exempt from paying their third of the costs. Given the introduction of the CPA role would reduce the lawyer for child workload and hence their costs, it is envisaged that the overall costs to parents and the government would not increase substantially. It is also hoped that the introduction of the CPA role would lead to an increase in parents settling their dispute early in the FDR process, as was seen in Ontario with the introduction of "Voice of Child Reports", thus actually reducing the overall costs incurred in some cases.[113]

What about parents making their own care and guardianship decisions?

While this article has focused on listening to children's views in the FDR and court settings, many care and guardianship decisions are made for a child by their parents or guardians without the need for FDR or a court decision. Section 39 of the Care of Children Act specifically encourages "parents, guardians, and donors to agree to their own arrangements for the child's care, development and upbringing". However, while the Care of Children Act encourages parents and guardians to make their own arrangements, there is no requirement that parents explain the situation to their children and take their views into account before making those arrangements. In fact, there is currently limited information available to parents making them aware of the benefits of listening to their children's views when making important decisions for them. It is recommended, that in addition to ensuring children's views are heard in FDR and in court, more information should be made available to parents, making them aware of the benefits of listening to their children's views and indeed encouraging them to do so, before making important care and guardianship decisions for them.[114]

Conclusion

When decisions about a child's care or guardianship are being determined, there are many benefits to a child who receives the opportunity to be heard by the decision-maker regarding the decision. For a child to be truly heard it is vital that their views are listened to by people who know how to build rapport with them and support them through the process. While this may take extra time and effort on the part of parents, representatives of the child and decision-makers, the potential improved outcomes and mental health benefits for a child make this worthwhile. In addition, hearing a child's views early in proceedings will often also lead to quicker resolution of the issue. By taking these measures, those who are making important care and guardianship decisions for children are demonstrating to those children that their views, while not determinative, have value.

The introduction of the role of CPA in New Zealand would be a major change to the way children are currently listened to in the family justice system. The recommendations in this article are an outline, and it is suggested further work is needed in developing such a role, including establishing a pilot project for the role of CPA. It is hoped as a nation we can develop a family justice system that truly hears children's views when care and guardianship decisions are being made for them. It is vitally important that we support children and do what we can to enhance their wellbeing throughout their childhood. This is especially important when the main structure that sustains them, their family unit, is undergoing change. By truly hearing a child's view about how they see their world, the adults involved in making what can be life-changing decisions for those children, may well learn a new perspective, see a new outlook, and ultimately, will hopefully reach the best possible care or guardianship outcome for the child involved.

Footnotes

1. Care of Children Act 2004, s 3.
2. *General Comment No 12 (2009): The right of the child to be heard* UN Doc CRC/C/GC/12 (1 July 2009) at [41]. See

also Deb Inder "Children's Participation in the Context of Private Law Disputes in the New Zealand Family Justice System" (PhD Thesis, University of Otago, 2019) at 289.

3. At [23] and [34]. See also Daisy JH Smeets and Stephanie Rap "Child Participation in Family Law Proceedings Pedagogical Insights on Why and How to Involve Children" in Wendy Schrama and others (eds) *International Handbook on Child Participation in Family Law* (Intersentia, Cambridge, 2021) at 58.
4. *The right of the child to be heard*, above n 2, at [45].
5. Peter Boshier "The Family Court and the Future" (paper presented to New Zealand Law Society Workshop Advanced Counsel for the Child — reviewing the role; thinking outside the square, October 2004) at 54.
6. Carol Smart "From Children's Shoes to Children's Voices" (2002) 3 Family Court Review 307 at 309.
7. Jill Goldson *Hello, I'm a Voice, Let me Talk: Child Inclusive Mediation in Family Separation. Innovative Practice Report No 1/06* (Families Commission Kōmihana ā Whānau, 2006) at 17.
8. Smart, above n 6, at 308.
9. Pauline Tapp and Mark Henaghan "Family law: conceptions of childhood and children's voices — the implications of Article 12 of the United Nations Convention on the Rights of the Child" in Anne B Smith, Nicola J Taylor, and Megan M Gollop (eds) *Children's Voices Research, Policy and Practice* (Pearson Education New Zealand Limited, Auckland, 2000) 91 at 97. They state that: "Children will be aware that a problem exists ... and they may have a valid option for resolution of the matter." An example of such an attempt to shield a child can be seen in *Keen v Bradford* [2020] NZHC 2213, [2020] NZFLR 638 at [85].
10. Jan Doogue and Suzanne Blackwell "How do we best serve children in proceedings in the Family Court" (2000) 3 BFLJ 193 at 195. Note these findings came from AK Mitchell "Children's Experience of Divorce" (1987) 2 Children and Society 136.
11. Patrick Parkinson and Judy Cashmore *The Voice of a Child in Family Law Disputes* (Oxford University Press, Oxford, 2008) at 68.
12. Nicola Taylor and Megan Gollop "Children's Views and Participation in Family Dispute Resolution in New Zealand" in Anne B Smith (ed) *Enhancing Children's Rights Connecting Research, Policy and Practice* (Palgrave Macmillan, Bassingstoke (UK), 2015) 242 at 250. In *SDE v SM* [2019] NZHC 283 at [29] Peters J acknowledged that:

    > ... it appears the Court will seldom seek to make an order that conflicts with the views of a child who is older than 14 or 15 years. There is a very practical difficulty in insisting a child of that age do something which they do not wish to do.

13. Anne B Smith and others *Access and Other Post-Separation Issues. A Qualitative Study of Children's, Parents' and Lawyers' Views* (Children's Issues Centre, University of Otago, Dunedin, 1997) at 40.
14. Goldson, above n 7, at 16.
15. Carol Smart and Neale Bren "'It's My Life Too' — Children's Perspectives on Post-Divorce Parenting" March [2000] Fam Law 163 at 165 and 166. Note this article concentrated on decisions that were made within the family, without the assistance of professionals.
16. Parkinson and Cashmore, above n 11, at 67.
17. Carol Smart, Bren Neale, and Amanda Wade *The Changing Experience of Childhood. Families and Divorce* (Polity Press, Great Britain, 2001) at 167.
18. Boshier, above n 5, at 52.
19. At 52. See also Parkinson and Cashmore, above n 11, at 67.
20. P Tapp "Judges Are Human Too: Conversations Between the Judge and a Child as a Means of Giving Effect to Section 6 of the Care of Children Act 2004" 2006 NZ L Rev 35 at 38.
21. Care of Children Act, s 6(2)(a).
22. Convention on the Rights of the Child 1577 UNTS 3 (opened for signature 20 November 1989, entered into force 2 September 1990) at art 12, para 1.
23. At art 12.
24. UNICEF "Convention on the Rights of the Child" UNICEF for Every Child <www.unicef.org>.
25. Anthony Aust *Modern Treaty Law and Practice* (2nd ed, Cambridge University Press, Cambridge, 2007) at 178–179.
26. Care of Children Act, s 6(2)(a) and (b).
27. Family Court (Supporting Children in Court) Legislation Act 2021, s 6.
28. Section 4.
29. *Jennings v Barnett* [2024] NZHC 596 at [108].
30. La-Verne King, Rosslyn Noonan and Chris Dellabarca *Te Korowai Ture ā-Whānau: The final report of the Independent Panel examining the 2014 family justice reforms* (Ministry of Justice, May 2019) at 24.
31. At 33.
32. King, Noonan, and Dellabarca, above n 30, at 7 and 34.
33. M Gollop and NJ Taylor *Parenting Arrangements after Separation Study: Evaluating the 2014 Family Law Reforms — Parents' and Caregivers' Perspectives — Research Summary* (Children's Issues Centre, University of Otago, Dunedin, New Zealand, 2020) at 11, 13, and 14.
34. *Concluding observations on the sixth periodic report of New Zealand* UN Doc CRC/C/NZL/CO/6 (28 February 2023) at [19].
35. Katy Wallace "It's my life so do I get a say? An analysis of whether Aotearoa New Zealand is listening to children's views in care-of-children proceedings as is required by the United Nations Convention on the Rights of the Child, and recommendations for improvement" (LLM (Hons) Thesis, University of Canterbury, 2023) at chapter 5.
36. Care of Children Act, subs 46E(2) states that prior to commencement of proceedings under the Care of Children Act, an "application must be accompanied by a family dispute resolution form that has been signed by an FDR provider within the preceding 12 months". There are some exceptions to this listed under subs 46E(4). For example, if the proceedings are "without notice" the family dispute resolution form is not required, see subs 46E(4)(b).
37. Ministry of Justice "Family Dispute Resolution Operating Guidelines" (2018) <www.justice.govt.nz> at 13.
38. NJ Taylor and M Gollop *Parenting Arrangements after Separation Study: Evaluating the 2014 Family Law Reforms — Family Justice Professional's Perspectives — Research Summary* (Children's Issues Centre, University of Otago Dunedin, New Zealand, 2020) at 4.
39. The Family Court (Supporting Children in Court) Legislation Act 2021, s 11 provided for this amendment to the Family Dispute Resolution Act 2013, s 11.
40. At s 11.

41. Aisling Parkes "Implementation of Article 12 in Family Law Proceedings in Ireland and New Zealand" in Tali Gal and Benedetta Duramy (eds) *International Perspectives and Empirical Findings on Child Participation: From Social Exclusion to Child-Inclusive Policies* (Oxford University Press, Online Oxford Academic, 2015) 111 at 120.
42. Nicola Taylor and John Caldwell "Judicial Meetings with Children: Documenting Practice Within the New Zealand Family Court" [2013] NZ L Rev 445 at 456 and 457.
43. Family Law Section New Zealand Law Society *Lawyer for the Child Best Practice Guidelines* (2020) at [5.3].
44. Care of Children Act 2004, s 7. This section replaced the original s 7, which had stated the court had to appoint a lawyer for child in any proceedings involving the "day-to-day care for [a] child, or contact with [a] child", if the proceedings were likely to "proceed to a hearing", unless such an "appointment would serve no useful purpose".
45. Taylor and Gollop, above n 38, at 6.
46. Emails from Ministry of Justice to Katy Wallace regarding the number of cases with lawyer for child appointments, and total number of cases under the Care of Children Act, for the 2010–2019 calendar years. The data quoted in these emails was released under the Official Information Act from the Ministry of Justice's Case Management System.
47. Ministry of Justice "Submission to the Justice Committee on the Family Court (Supporting Children in Court) Legislation Bill 2020 — Departmental Report", at [34].
48. At [34] and [35].
49. National Collective of Independent Women's Refuges "Submission to the Justice Committee on the Family Court (Supporting Children in Court) Legislation Bill 2020" at 14–15.
50. Taylor and Gollop, above n 38, at 6. A total of 364 family justice professional completed the survey for this study. They included lawyers, psychologists, counsellors, Parenting Through Separation providers, Family Dispute Resolution providers, Community Law Centre and Family Court personnel, at 1.
51. At 6.
52. At 2.
53. Gollop and Taylor, above n 33, at 13.
54. At 13.
55. *GF v EF* [2019] NZHC 3140.
56. At [6].
57. At [37].
58. At [38].
59. At [40].
60. *Carter v Scott* [2020] NZHC 1447.
61. At [55] to [57].
62. *The right of the child to be heard*, above n 2, at [21]. The research they referenced was Gerison Lansdown *The evolving capacities of the child* (Innocenti Research Centre, UNICEF/Save the Children, Florence, 2005) at 4. Lansdown explained that children can express views in many ways including through "emotions, drawing, painting, singing, drama". He went on to explain that "very young children, even babies, as well as children with profound learning difficulties, are capable of expressing views".
63. At [21]. For information relating to children communicating through drawing see: Johanna Einarsdottir, Sue Dockett, and Bob Perry "Making meaning: children's perspectives expressed through drawings" (2009) 179 Early Child Development and Care 217 at 217, 229 and 230. This article explores children's ability to express their feelings and views using the medium of drawing. While the subject material related to starting school, and was not specifically family law related, it showed that through the process of drawing, and talking about their drawings, young children aged four to six years, were able to convey their perspective on an issue that was important to them. It concluded that although not all children like to draw, for those children that do, drawing is a valuable way for children and adults to communicate with each other.
64. *The right of the child to be heard*, above n 2, at [21].
65. See generally, Emmie Henderson-Dekort, Hedwig van Bakel, and Veronica Smits "The Complex Notion of the Capacity of a Child: Exploring the Term Capacity to Support the Meaningful Participation of Children in Family Law Proceedings" (2022) 11 Social Sciences 98.
66. *The right of the child to be heard*, above n 2, at [21].
67. *Hartley v Wood* [2022] NZFC 1708.
68. At [8].
69. *The right of the child to be heard*, above n 2, at [20].
70. *Townsend v Poole* [2022] NZFC 2773, [2022] NZFLR 87.
71. At [22] and [24].
72. *Graves v Tonks* [2019] NZFC 4473 at [1].
73. At [104].
74. *Wilder v Keith* [2020] NZFC 5074 at [3].
75. At [55].
76. At [103].
77. Wallace, above n 35, at 117.
78. King, Noonan and Dellabarca, above n 30 at 34.
79. Mark Henaghan "Legally Rearranging Families" in M Henaghan and B Atkin (eds) *Family Law Policy in New Zealand* (Oxford University Press, Auckland, 1992) at 116. Note an old edition of *Family Law Policy in New Zealand* is cited to show that the question of whether lawyer for child is the most appropriate professional to work with children is one that has been raised for over 30 years now. See also Interview with Simon Jefferson (Nine To Noon, Radio New Zealand, 14 October 2020) audio recording provided by <www.rnz.co.nz>.
80. Principal Family Court Judge "Family Court Practice Note. Lawyer for the Child: Selection, Appointment and Other Matters" (19 June 2020) <www.justice.govt.nz> at [9.9]. The other eligibility criteria a lawyer should meet are:

    > (a) A current practising certificate; (b) The ability to exercise sound judgement and identify central issues; (e) A sound knowledge of COCA [the Care of Children Act], OT [Oranga Tamariki Act], Family Violence Act 2018, and the Family Court Rules 2002 and section 9B of the Family Court Act 1980. (g) Good people skills and an ability to relate to and listen to adults; (l) personal qualities compatible with assisting negotiations in suitable cases and working co-operatively with other professionals; (m) Independence and strong advocacy; (n) Knowledge, understanding and compliance with the FLS Best Practice Guidelines; and (o) A regulatory history compatible with the lawyer's suitability to act in the role of lawyer for the child.

81. NZLS CLE Ltd "Lawyer for Child 2023" (2023) <www.lawyerseducation.co.nz >.
82. Scottish Government "Children (Scotland) Act 2020 — Registers of child welfare reporters, curators ad litem and

solicitors: consultation" (2021) <www.gov.scot> at Part 2: Register of Child Welfare Reporters [2.2].

83. At [2.6].
84. At [2.1].
85. At [2.58].
86. At [2.56].
87. Scottish Government "Registers of child welfare reporters, curators ad litem and solicitors appointed when an individual is prohibited from conducting their own case: consultation analysis" (2022) <www.gov.scot> at [91].
88. At [96].
89. At [100].
90. Rachel Carson and others *Children and young people in separated families: Family law system experiences and needs. Final Report* (Australian Institute of Family Studies, Melbourne, 2018) at 86, 92–93.
91. At 25.
92. At 53–54.
93. At 52.
94. At 62.
95. At 61–62.
96. Rachel Birnbaum and Nicholas Bala "Views of the Child Reports: The Ontario Pilot Project" (2017) 31 International Journal of Law, Policy and The Family 344.
97. Rachel Birnbaum and Nicholas Bala "Canada" in Wendy Schrama and others (eds) *International Handbook on Child Participation in Family Law* (Intersentia, Cambridge, 2021) at 127. See also Government of Canada "The Canadian Constitution" (2021) <www.justice.gc.ca> for information pertaining to the Canadian provincial legislature.
98. At 127.
99. Birnbaum and Bala, above n 96, at 348 and 358.
100. Birnbaum and Bala, above n 97, at 127. The provinces with increasing use of these reports include British Columbia, Saskatchewan, Manitoba, Ontario, Nova Scotia, and New Brunswick.
101. Family Court Rules 2002, s 416U.
102. Birnbaum and Bala, above n 96, at 348 and 358.
103. It is typical practice in Canada for a different parent to bring their child to the two Voice of the Child Report meetings. See Michael Saini *The Voice of the Child in Family Law: Exploring Strategies, Challenges, and Best Practices for Canada* (Department of Justice Canada, 2019) at 28.
104. Family Court Act 1980, s 9B(1)(b).
105. Family Law Section New Zealand Law Society, above n 43, at [5.6]. See also Family Court Act, s 9B(1)(a).
106. Robert Ludbrook "Lawyers who Represent Children" (2000) 46 YouthLaw Review 4 at 4.
107. Inder, above n 2 at 297.
108. For information relating to 'scaffolding a child' see HR Schaffer "Joint Involvement Episodes as Context for Development" in Harry Daniels (ed) *An Introduction to Vygotsky* (Routledge, London, 1996) at 270.
109. Care of Children Act, s 7(2).
110. King, Noonan and Dellabarca, above n 30, at 37.
111. For more detail about this please refer to the discussion of *Carter v Scott*, above n 60. See also the earlier comparison between *Graves v Tonks*, above n 72, and *Wilder v Keith*, above n 74.
112. Ministry of Justice "Costs you need to pay after your case" <www.justice.govt.nz>.
113. Refer to the discussion on "Voice of Child Reports", above n 96, at 100.
114. *The right of the child to be heard*, above n 2, at [92]. This document outlines that states parties to the UNCRC "should encourage, through legislation and policy, parents, guardians and childminders to listen to children and give due weight to their views in matters that concern them".