

**PRACTICE NOTE: HAGUE CONVENTION CASES: NEW ZEALAND
FAMILY COURT GUIDELINES**
**(On the appointment of lawyer for the child/counsel to assist, specialist
reports and on views of the child)**

1 PRELIMINARY

- 1.1 All section references are to the Care of Children Act 2004.
- 1.2 References to the Hague Convention are to the Hague Convention on the Civil Aspects of International Child Abduction.
- 1.3 Nothing in this Practice Note shall derogate from the objects of the Hague Convention as set out in Article 1.

2 THE APPOINTMENT OF LAWYER FOR THE CHILD

- 2.1 The appointment of lawyer for the child shall be considered where any of the defences in s 106 is raised by the respondent (unless the Court is satisfied that the appointment would serve no useful purpose).
- 2.2 In deciding whether to make an appointment, the Court shall have regard to:
 - (a) whether the Court would be adequately or more properly assisted by authorising an expert report under s 133;
 - (b) the functions of the Central Authority as set out in Article 7 of the Hague Convention; and
 - (c) the importance of dealing with applications speedily and in a summary manner, and to this end the need to minimise the hearing time required.

3 COUNSEL TO ASSIST THE COURT

- 3.1 The appointment of counsel to assist the Court shall be considered where, by virtue of special circumstances or difficulties, the Judge needs the assistance of counsel.

4 BRIEFING GIVEN TO LAWYER FOR THE CHILD AND COUNSEL TO ASSIST THE COURT

- 4.1 Upon the appointment of lawyer for the child or counsel to assist the Court, the Court will give consideration to whether:
 - (a) the appointment should be for a specified purpose and/or limited period of time;
 - (b) there should be an initial appointment for a specific task with a review following completion of the task (at a judicial conference).
- 4.2 In Hague Convention cases, the brief given to the lawyer for the child and counsel to assist the Court shall be clearly defined by a Judge, usually at a judicial conference which follows the expiry of the time for the filing of a notice of defence. Counsel will be required to file a joint memorandum prior to that conference, setting out the terms of a suggested brief. A standard brief for lawyer for child which might be used is attached.

5 BRIEF GIVEN TO EXPERT REPORT WRITERS

- 5.1 In Hague Convention cases, the brief given to expert report writers under s 133 shall be clearly defined by a Judge. Counsel will be required to file a joint memorandum setting out the terms of a suggested brief.
- 5.2 The brief given to expert report writers shall address:
- (a) the parameters of the issues to be determined in Hague Convention cases, so as to ensure that the report writer is aware of the specific task under Part 2 Subpart 4 of the Care of Children Act 2004;
 - (b) the questions of fact to be determined arising from the s 106 defences in the case in question.

6 THE VIEWS OF THE CHILD

- 6.1 In every Hague Convention case the Court shall consider whether or not s 6 applies.
- 6.2 It is expected that s 6 will apply in those cases where the following defences are raised.
- (a) More than a year and settled (s 106(1)(a)).
 - (b) Grave risk of harm or intolerable situation (s 106(1)(c)).
 - (c) Child's objections (s 106(1)(d)).

COMMENCEMENT DATE

This revised Practice Note is issued on 24 March 2011 and comes into operation on 24 March 2011.



Judge P F Boshier
PRINCIPAL FAMILY COURT JUDGE

**STANDARD BRIEF FOR LAWYER FOR THE CHILD IN
HAGUE CONVENTION PROCEEDINGS**

- 1 Consider the issues for the child(ren) arising from the specific s 106 defences pleaded in the notice of defence.
- 2 If the “child objection” defence is raised, then the brief is to be extended to address the following.
 - (a) Does the child object to his or her return?
 - (b) If the child objects, the basis for his or her objection.
 - (c) Comment on any factors which may assist the Court in weighing up the issues of the child’s age and maturity.
 - (d) Identify any factors (if any) impacting on the child’s views.
 - (e) Report on any views (if any) a child may have about matters affecting him or her in the context of the Hague Convention proceedings.
 - (f) Identify any matters from the child’s perspective (if any) relevant to the exercise of the Court’s discretion should a defence be made out.
 - (g) From the child’s perspective, are there any other defences which should have been pleaded?
 - (h) Represent the views of the child at the hearing.