

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

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

### 9 What are the Grounds for a Protection Order?

The Court can make a Protection Order if it is satisfied that there has been domestic violence and that the Order is needed to protect the Applicant or other people. The Protection Order can be extended to cover other people such as friends, relatives or a new partner provided that the other person is at risk from the Respondent because of that person’s relationship with the Applicant.

### 10 What are Urgent Applications

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

### 11 What if there are children involved?

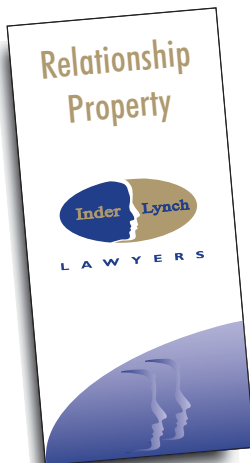
When there are allegations of violence, the Family Court will not allow the violent person to have the day to day care of a child, or unsupervised contact with the child unless the Family Court is satisfied that the child will be safe. Protection Orders automatically extend to cover the children.

### 12 What should you do if you are a victim of domestic violence?

1. If you are in danger call the Police.
2. If you need a place of safety contact the Women’s Refuge at the front of the white pages of the telephone book.
3. Contact us to discuss applying for a Protection Order.

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

Whether the Protection Order has been made without notice, or you are served with an On Notice Application for a Protection Order, there are strict time limits for filing a response in the Family Court. If you are served with either an Order, or an Application under the Domestic Violence Act, we would advise you to contact us immediately to obtain your advice and protect your position.



**What do you need to consider before buying a property with your partner?**

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

## INDER LYNCH

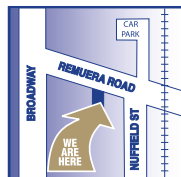
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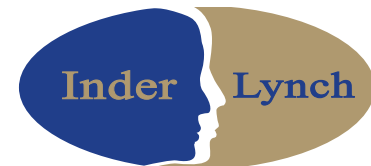
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# Family Law



LAWYERS



# Important facts about Family Law

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

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

### 1. Guardianship

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

### 2. Day to Day Care

This is the right to have the day to day care of a child. It may be shared with the other parent. If parents cannot agree on whose day to day care the child should be in, an application can be made to the Family Court for the Court to determine the matter. The Court can make a Parenting Order specifying who will have the day to day care and whether it will be shared.

### 3. Contact

Contact is the child's right to spend time with the parent who does not have the day to day care. A Family Court can make Parenting Orders and attach conditions to contact such as requiring supervision or limiting the frequency and duration of the contact.

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

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

## 3 What is child support?

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

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

## 4 What is spousal maintenance?

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

you wish to make an application for spousal maintenance. Applications for spousal maintenance are made to the Family Court.

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

If parents cannot agree upon guardianship issues or care arrangements regarding their children, one or other parent (and in certain circumstances other family members) can make an application to the Family Court for orders such as Parenting Orders, Orders Preventing Removal of a Child, or Appointment as a Guardian.

### Counselling

Once an application has been filed in the Family Court, and the other parent (the Respondent) has filed a defence, the parties are generally referred to free counselling to see if the parties are able to reach agreement themselves.

### Mediation

If no agreement is reached at counselling, then the parties are usually referred to mediation. The mediation takes place with the parties and their lawyers present. The Mediator has no power to make a decision but can record any agreement reached as a binding Family Court Order.

### Court hearing

If no agreement is reached at mediation then the matter will go to a hearing. At the hearing the parties and any witnesses will give evidence, be cross-examined and then a Judge will make a decision based on the evidence they have heard.

### Lawyer for the Child

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

# Domestic Violence

## 6 What is domestic violence?

Domestic violence includes physical, sexual or psychological abuse.

1. Physical abuse includes hitting, punching, kicking or physically assaulting another person.
2. Sexual abuse is sexual contact with another person without their permission.
3. Psychological abuse includes intimidation, threats or damage to property. It also includes allowing a child to see or hear domestic violence or trying to control another person's contact with their friends, their relatives or controlling their access to money as a way of having power over them.

## 7 What is a Protection Order?

A Protection Order is an Order of the Family Court. A Protection Order prevents the other party (the Respondent) from using domestic violence against the person who applied for the Order (the Applicant). In particular, the respondent must not:

1. Physically, sexually or psychologically abuse or threaten anyone protected by the Order.
2. Damage or threaten to damage the Applicant's property.
3. Encourage anyone else to do any of these things.
4. Have any contact with the Applicant including not coming to the house, being in the Applicant's neighbourhood, or following the Applicant or children.

If the Applicant agrees to live with the Respondent, the non contact provisions are suspended. The non violence conditions continue. If the agreement to live together is withdrawn then the non contact provisions take effect again without the need to make a further application to the Family Court.