

Reducing risk and harm when going to Family Court

An Information Guide for Victim-Survivors

2023

Produced by The Backbone Collective

www.backbone.org.nz



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Introduction

The Backbone Collective (Backbone) regularly hears from women victim-survivors who are involved in proceedings in the New Zealand Family Court with an abusive ex-partner, family or whānau member. These proceedings might be about Protection Orders, Parenting Orders, relationship property, child support or Oranga Tamariki applications. Victim-survivors are often expected to go to court in person at the same time as the person who abused them and/or their children.

In Backbone's survey on the Family Court in 2017, we heard from 496 victim-survivors from throughout Aotearoa New Zealand who told us about their experiences of Family Court proceedings.¹ Victim-survivors told us attending Family Court can put them at risk of further abuse. Fifty eight percent of the survey participants told us they had been threatened, intimidated, or physically assaulted by their abuser while attending

court-related appointments or hearings. Backbone is enormously concerned about these findings and is advocating for a safer Family Court response to victim-survivors and their children.

The Family Court is currently not well setup to protect victim-survivors. We continue to hear from women victim-survivors about unsafe experiences at the Family Court. Victim-survivors say that the physical court environment is not protective, the law is not protective, court personnel are not well trained and there are few policies or practices that help to keep victim-survivors safe while at Family Court. There is a lot of change needed to improve the overall Family Court response to victim-survivors of family and sexual violence. While we continue to advocate for change we made this information guide to help you reduce the risk of harm when using the system as it currently is.

¹You can read Backbone's report 'Out of the Frying Pan and into the Fire', on our website by clicking on the link below. <https://static1.squarespace.com/static/57d898ef8419c2ef50f63405/t/5949a425a5790a3989f7e74e/1497998414103/Family+Court+Survey+report+final+080617.pdf>

Purpose of this information guide

This guide has been produced to inform victim-survivors of family and/or sexual violence about the resources available to help reduce risk of harm when going to the New Zealand Family Court.²

The information in this guide is not a substitute for legal advice. However, you are welcome to share the guide with your lawyer so that they can support you with any requests you want to make to increase your safety while at court.

The information in this guide has been gathered through information requests to the Ministry of Justice and conversations with people who work at the New Zealand Family Court. Feedback and ideas from some women victim-survivors also informed the content of this guide.

One of our purposes has been to compile all the necessary information in one document. However, this means it contains a lot of

material and that can be overwhelming. It may help to ask a friend, family or whānau member or a support worker to go over the information in the guide with you.

Throughout the guide we have provided alerts, such as the one to the right, to indicate where procedures and practices can vary. This information is based on the experiences of victim-survivors Backbone has heard from or a lack of clarity and detail in the information provided to Backbone from official sources.

Backbone has relied on many hours of input from volunteers for the content and design of this guide. We are very grateful to these individuals for their support. Without them, this guide would not have been possible.

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Please be aware that even though Backbone has been advised that the resources discussed in this guide are available in courts throughout the country, we have heard from some women victim-survivors that they have been denied support people, access to other ways of giving evidence and security services when they attended Family Court hearings.

² You may be required to go to the Family Court to attend different kinds of appointments, hearings, conferences or fixtures. In this guide we will use the term 'go to court' to include all the different types of proceedings you may be required to attend. To find out more about the different types of hearings at Family Court visit <https://www.justice.govt.nz/family/care-of-children/resolving-parentings-disagreements/going-to-family-court-after-mediation/after-you-apply-for-an-order/>

The Family Court environment

It is important to understand that the Family Court does not proactively offer any safety supports to victim-survivors. You may find you have to advocate firmly for yourself to access any of the services discussed in this guide.



Image untitled
Gifted to Backbone
by the artist

There are no formal requirements on the wide range of people who work at the Family Court to understand family and sexual violence and no set of family and sexual violence standards for them all to work to.³ Therefore, workers can hold a range of misunderstandings and misconceptions that may result in them displaying harmful actions and language.

Be prepared that the people working in the court may not follow expected processes. If you want to find out more information about Family Court applications and processes visit the Community Law website and refer to their online Family Court manual.⁴ That manual has not been written specifically for victim-survivors so you may find the language minimises your experience of violence and abuse and it may not reflect your own experience of the Family Court

If you do not have a lawyer (referred to as being ‘unrepresented’) you will be speaking directly to the Judge. For more information about going to court without a lawyer see: <https://www.justice.govt.nz/courts/going-to-court/without-a-lawyer/>

³ The Ministry of Justice will be providing family and sexual violence training modules for people who work at the Family Court during 2023. People who work at the Family Court include Ministry of Justice staff and people contracted to provide services such as lawyers and report writers. Judges have their own training service <https://tkk.justice.govt.nz/>

⁴ <https://communitylaw.org.nz/community-law-manual/chapter-12-relationships-and-break-ups/relationships-and-break-ups/>

Reducing your risk of physical harm

The following section discusses support and services that may be available to reduce the risk of physical harm while you are at the Family Court

Security at Family Court

The following information has been reviewed and confirmed by the Court Security Officer service.

Court Security Officers (CSOs) are responsible for ensuring the health and safety of all staff, judiciary and visitors to a courthouse.⁵ This can include security screening and patrolling. CSOs may have some sexual and family violence training but they are not specialists.

CSOs have some legal powers. They include the power to:

- refuse entry
- ask people to provide their name, address and reasons for visiting
- ask for identification
- ask to search and detail people and their belongings
- deny entry to, or remove people from the court if they refuse to comply with any of the above requests.

Courtrooms and hearing rooms are fitted with duress alarms that court staff can activate to ensure a rapid response from CSOs.

If you need the assistance of a CSO while you are at court you, or your lawyer can ask at the Family Court counter or ask a CSO on duty for assistance.⁶

Tell your Family Court case manager if you have concerns about your safety while at court. They will not usually ask you, so you will need to be proactive in raising your safety concerns.

Court Security Officers may be able to help reduce your risk of physical harm in the courthouse.

Kaiārahi/Family Court navigators can support you in the courtroom.

The CSO may be able to then check on you regularly while you are at court.

⁵ As advised by Ministry of Justice to an Official Information Request made by Backbone in May 2021. The legislation for Court security is contained in the Courts Security Act 1999.

⁶ CSOs wear a black uniform that has a Ministry of Justice emblem on it.

Alternatively, you, or your lawyer can email your Family Court case manager ahead of time to advise them of your safety concerns and ask for the support you may require.⁷ You can notify the Family Court case manager at any time but it is strongly recommended that you give them as much notice as possible prior to any hearing.

When emailing the Family Court case manager make sure your subject line clearly states that the email is in respect of safety concerns and the date when the security service will be required.

For example, in the email subject line:

**“Safety Concerns: Hearing xx/xx/2021
- FAM-XXXX-XXX-XXXXXX”**

It is helpful to include as much information as you can about your safety concerns. Be direct. If, for example the abuser has threatened to kill you, tell them that and that you have concerns that they will do as they have threatened. You do not have to provide evidence of your concerns in this email – your gut instinct is enough. The Family Court case manager (or the Kaiārahi/navigator-see below) should discuss your concerns with the CSO team at the Family Court house that you are scheduled to attend.

Backbone has been advised by the CSO service that the CSO manager at the Family Court will undertake a risk assessment⁸ based on the information you share and any other information available from other agencies involved. If the CSO team decide there is a risk to your safety they will then make provisions for security staff to be available for your court attendance.

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Please be aware some victim-survivors have told Backbone that security was not in attendance at their court session or stood in places that were not close enough to provide help if needed.

⁷ Contact details for the Family Court case manager will be provided on any documentation received from the court. The documentation will also provide a FAM number which should be used whenever you are contacting someone in relation to your case.

⁸ Backbone has no further information about what the risk assessment tool is or what it covers.



There is no guarantee these facilities will be available and Ministry of Justice has been unable to clarify for Backbone where these facilities are available or what criteria is used to make them available.

There are other security protocols and technical security in place to assist court security with their role. In some court houses victim-survivors may be able to access facilities such as:

- separate waiting areas
- separate routes to court rooms
- toilet facilities that are not accessible to others using the Family Court.

To find out more about these facilities, you will need to contact your Family Court case manager or the Family Court Kaiārahi service (see below).⁹

The Family Court Kaiārahi service was launched in 2022 by the Ministry of Justice and is a free service to help people navigate the Family Court. Family Courts throughout Aotearoa New Zealand have Kaiārahi workers (navigators). These people have received

some training on family and sexual violence but they are not specialists. They cannot give you legal advice. They can:

- provide information about court processes
- give guidance to help address any barriers that prevent you from participating (such as security issues, understanding court documents, accessibility issues etc.)
- be a support person during your court proceeding
- refer you to other services available in the community.

You can contact your local Family Court Kaiārahi in the following ways:

Ask at the main counter (customer services) at the courthouse

Phone 0800 COURTS (0800 268 787)

Email Kaiārahi@justice.govt.nz

A support person or professional you are working with can contact the Kaiārahi on your behalf.

⁹ If you have matters in the Criminal Court you may have been assigned a Victim Advisor. However, please note that Court Victim Advisors are not able to provide support for victims in their Family Court proceedings. The following webpage has more information about Victim Advisors <https://victimsinfo.govt.nz/en/home/going-to-court/#step-2>

Who can attend Family Court proceedings

The public isn't allowed to attend a Family Court hearing. The only people who can be there are people who work at the court, the lawyers and the people directly involved in a case, including witnesses.

However, people are allowed support people with them outside the courtroom and in waiting areas or in the courtroom with the Judge's permission. That means, the abuser's family or friends may be present in the public waiting areas. This can be intimidating and potentially dangerous for some victim-survivors. If you feel intimidated or threatened by supporters of the abuser then you, your lawyer, support person or a Kaiārahi can explain to court staff that you feel unsafe at court and ask a Court Security Officer (CSO) to stay close to you.

You can take support people with you to court. You can read more about support people in the following section.

Journalists can attend some Family Court hearings but this does not happen very often.¹⁰ Journalists can't publish any names or details that might identify anyone involved in the case unless a Judge says they can.¹¹

¹⁰ In 2016 there were only 14 Family Court hearings where media were present. This number accounts for a tiny percentage (.002%) of the hearings that occurred during 2016. Backbone was unable to ascertain from the Ministry of Justice whether these were family or sexual violence related proceedings.

¹¹ To find out more about media at Family Court visit <https://www.justice.govt.nz/assets/Documents/Publications/A-Guide-for-Media-reporting-Family-Court.pdf>

Wait times and preparation

If you have to go to Family Court for a hearing you will probably need to arrive at 9am. However, there is a daily list of cases that the court will work through. So, although your hearing time might be listed as 10am, you may not be called into a court hearing room until hours later.

Other people involved in your case, including the abuser and their supporters and lawyer, will therefore be in and around waiting areas during this time. If you feel worried about your safety during wait times you may ask a Court Security Officer (CSO) to stay close, although please be aware they will have other duties.

Victim-survivors have made some suggestions to Backbone about how to better manage the wait times and prepare for the stress of being in the court environment.

Managing wait times and stress of being at court

- Be prepared to wait for your case to be called.
- Get to court early so that you have a better chance of securing one of the private waiting rooms.
- Sit with your back to the waiting room if the abuser is in one.
- Take a support person with you who can stay with you during wait times.
- Take food, drink, tissues and lip balm with you and be prepared for a long day.
- Take a stress ball or something you find comforting to look at. Use tips for managing distress to help you stay calm (see later in this guide).
- Avoid drinking too much coffee - it may cause more agitation and mean you need to use the toilet more often.
- Avoid drinking alcohol the night before if possible - it can interrupt sleep, make you thirsty, tired and extra anxious or unhappy the next day.
- Take your evidence with you in a folder.
- Wear something that makes you feel confident and comfortable.
- If you don't have a support person with you at court arrange for someone that you can call during the breaks.
- Find out about the parking available well before your hearing. Can you arrange for someone to drive you to court?
- Find out about resources available to meet your accessibility needs well before your hearing date - see accessibility section later in this guide.
- If you need an interpreter service contact your Family Court case manager to help you arrange this well before your hearing date - see interpreter section later in this guide.
- If you are worried about your safety contact the Family Court case manager to discuss separate entrances, waiting areas etc. as explained earlier in this guide.

Reducing your risk of emotional and psychological harm

Being at court can be distressing and frightening. You might feel overwhelmed by seeing your abuser (and their supporters) and/or having to talk about your experiences. The following section discusses some supports and options available to reduce your risk of emotional and psychological harm while you are at Family Court.

Some things can help you feel psychologically safer while you are at Family Court

- Take a support person with you to court.
- Use breaks to relax, eat, stretch.
- Prepare in advance for negotiations during breaks and before court.
- Apply to give evidence in a special way e.g. behind a screen, by video link etc.
- You or your lawyer can ask the Judge to intervene if unacceptable questions are asked or if you are distressed. The Judge may or may not intervene.
- Use tips to manage strong emotions and distress during cross examination and while at court.

Support people

Taking a support person with you to court might help you feel less distressed and more confident. If you do not have friends, family, whānau or a family violence advocate who can support you then you can ask if the local Family Court Kaiārahi is available (see contact details in the previous section).

You can bring a support person to wait with you at the court but you will need to ask the Judge's permission to take them into the court room.

You can ask for permission ahead of time and it may be granted or denied, but you may also not be given a decision until you are at the court. Be aware that the Judge may ask the abuser if they give permission for your support person to be allowed in the courtroom. Be mentally prepared for any outcome.¹²

If your request to have a support person is granted, then a request for the support person to sit with you can also be made

(rather than at the back of the court room). *Note, there is no expectation the Court will grant such a request.*

You may be asked by the court who the support person is, and you might need to introduce the support person by name.

If allowed to be in the courtroom your support person cannot take part in the hearing and must leave if the Judge asks them to. At any point the Judge can ask the support person to leave the courtroom, either temporarily, or for the duration of the court fixture. The support person must then leave.¹³

The support person may politely ask the Judge to outline their reasons for asking them to leave.¹⁴ However, the Judge may choose not to answer this question.

It is not recommended that either you or your support person object to the Judge's request for the support person to leave (verbally or through body language), as this may impact your case.

If the support person has been asked to leave, they can ask you whether you would like them to stay nearby to be available for emotional support during adjournments.

Other types of support in court

If you are unrepresented by a lawyer you can ask permission from the Judge to have a lay assistant or 'McKenzie Friend' accompany you while you are at court. A McKenzie Friend can sit with you in court, take notes on your behalf, and quietly offer you suggestions and advice. This person cannot speak on your behalf in court and has no right to address the Judge. You will need to ask permission for this person to attend court with you prior to going to court.¹⁵

¹² Your lawyer, or if you are unrepresented, you, must ask the Judge for permission to have a support person with you during the conference/hearing/fixture under:

- section 137 subsection (1) (h) of the Care of Children Act 2004, or
- section 170 (2) of the Family Violence Act
- section 166 subsection (1) (nb) (ii) of the Oranga Tamariki Act 1989 / Children's and Young People's Well-being Act 1989.

¹³ Section 137, subsection (4) of the Care of Children Act 2004, or section 166, subsection (3)(c) of the Oranga Tamariki Act 1989 / Children's and Young People's Well-being Act 1989.

¹⁴ See section 137 subsection (2) of the Care of Children Act 2004, or section 166 subsection (2) of the Oranga Tamariki Act 1989 / Children's and Young People's Well-being Act 1989

¹⁵ You and your lay assistant/McKenzie Friend will need to fill out a form prior to going to court. <https://www.justice.govt.nz/family/about/without-a-lawyer/>

Breaks

You may want your support person to offer emotional support during breaks. However, their ability to support you will depend on what stage your hearing is at when the break is taken. If you are still giving evidence you may not speak to anyone about your evidence during the break. It may be better for you to spend this time alone to avoid any perception by other parties that you have done so.

During breaks when you are not giving evidence it can be helpful to have a support person who can offer a compassionate ear and remind you to pay attention to your physical needs. Prior to the court hearing, you may like to ask your support person to support you in the following ways during the breaks:

- Validate or acknowledge whatever feelings you are experiencing, without judgement or offering advice.
- Remind you to breathe deeply, drink water, go to the toilet, eat nutritious food, stretch or take a short walk.
- Support and encourage you to use any strategies such as mindfulness, grounding, yoga, box-breathing, exercise or other meditation during breaks, to regulate strong emotions and keep calm and focussed.¹⁶

However, much of the time during the break may be taken up talking with your lawyer if you have one.

Negotiations during breaks or before your hearing begins

Parties (you and the other person who is part of your proceedings) are able to come to an agreement about court orders even after the court hearing has begun and at any time up until the Judge gives a decision at the end of the case.

That means, while you are in the court building but outside of the hearing room the lawyers (your lawyer, the abuser's lawyer and the Lawyer for Child) may try and negotiate a consent order. Victim-survivors have described to Backbone how these negotiations can feel and have offered suggestions for managing them.

Negotiations during breaks or before the hearing begins can feel:

- **Surprising** – you thought you were attending a hearing and were going to give evidence, you did not expect to think about making orders by consent.
- **Very intense** – the lawyers (including your own lawyer) can place you under a lot of pressure to agree to orders.
- **Rushed** – there can be pressure to make decisions very quickly during short breaks which can make it hard to think through the implications of the suggestions.
- **Unclear** – the draft agreements will be hand written and may be very hard to read with no time given to explain what the words mean.
- **Confusing and triggering** – it can be hard to think rationally about the proposed consent orders if you are feeling scared, suffering anxiety or having trauma responses.
- **Not relevant** – sometimes the Family Violence Act proceedings and Care of Children Act proceedings can get brought together in these 'negotiations'. You might be pressured to agree to care of children arrangements that would undermine the safety you are trying to achieve in the hearing for a Protection Order.
- **Frightening** – being pressured into 'agreements' with the person who abused you can be stressful, traumatic and frightening.

It can be helpful to prepare in advance in case you are asked/pressured to negotiate consent orders. Some victim-survivors have suggested the following ways to prepare for negotiations at court:

Suggestions for managing negotiations during breaks or before your hearing begins

- **Give your lawyer clear instructions** that you do not expect to take part in negotiations during the breaks and they should make it clear to the other lawyers this is not appropriate.
- **Understand that you can refuse** to take part in negotiations outside of the court room.
- **Instruct your lawyer to ensure your safety** hearing under Family Violence Act is separate from any Care of Children Act proceedings. If you are not represented then you can make this request to the case manager if it looks like others are trying to combine the proceedings.
- **Be prepared** – think about your absolute non-negotiable needs regarding you and your children’s safety. Write them down ahead of the hearing and bring them with you to court.
- **Before your hearing you could arrange with someone you trust that you can call them during the breaks** to discuss the things you are being asked to agree on. Make sure this person understands what your non-negotiable needs are and if you call they are only required to remind you of those needs and not provide other kinds of advice.

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Backbone is aware that it is uncommon for special ways of giving evidence to be used in the Family Court. However, it is possible to apply to use other ways listed in the Evidence Act such as screens, video links etc. You can encourage your lawyer to support you to make the written application to give evidence in a way that makes you feel safer. See [section 103 of the Evidence Act](#).

Giving evidence

In Family Court proceedings, evidence is usually given in a written affidavit (formal court document)¹⁷ and verbally at in-person court appearances. Providing evidence verbally at in-person hearings happens in front of the Judge, the other party, and legal representatives.

Giving evidence in person can be stressful, frightening and distressing for a victim-survivor. In some circumstances you, or your lawyer, can apply to give evidence in a special way. The Evidence Act, section 103, makes provision for giving evidence in a special way if you are a victim-survivor of family and/or sexual violence.

Ways of giving evidence

The alternative ways to give evidence are set out in section 105 of the Evidence Act 2006 and are:

- a) in the courtroom but without being able to see the abuser or some other person if they could affect your ability to give evidence. The most common

way this happens is by a screen being placed between you and that person

- b) outside the courtroom, either in New Zealand or elsewhere, by use of an audio-visual link such as CCTV
- c) by the playing of a video recording of you giving evidence which is made before the court session
- d) in exceptional circumstances the Judge can order the use of another way.

It is up to the Judge to decide if you are able to give evidence in a special way. Therefore, you need to make an application to the court to ask for this. There is no particular application form to request giving evidence in a special way. You or your lawyer should put your request in writing and allow lots of time ahead of the hearing for the decision to be made.¹⁸

¹⁷ You can read more about what an affidavit is on the [Ministry for Justice website](#).

¹⁸ It is possible to make the request in person, but it is much easier for the court to consider the request, get the other party's views on the application and organise other means of giving evidence if you make your application in writing and with as much time before your hearing as possible.



Be aware that if you give evidence via video link you may be at a disadvantage especially if there are technical issues which mean you cannot see or hear as well as you would be able to in the Courtroom. The Court will usually not make any special allowances for example if there is a poor connection.

Your written application does not have to be extremely detailed but there are some things you will need to include.

- Explain that the case involves allegations of violence and/or abuse and that you want to give evidence in a special way (not in front of the abuser).

- Briefly explain your relationship to the other party (e.g. they are your ex-partner).
- Explain that you have fears for your safety and how you feel about giving evidence in front of the abuser, or with that person looking at you and that this could negatively impact on your ability to recall or explain what you have to say.
- Make suggestions about other ways of giving evidence that would be safer or easier for you. These might include from behind a screen in the court room, or by a video link from a different room at court, a different court house or from your home.
- You may want to include something to support your application. This might be a letter from a doctor, counsellor, or other expert advisor. *Please note that the other party (the abuser) will see your application and supporting documents.*

Plan to submit your written application at the directions conference if possible which is held before your hearing. A directions conference is where decisions are made about how the hearing will run i.e. who will be giving evidence, how long the hearing will need to be etc.¹⁹

After receiving your application to give evidence in a special way the Judge may hold a separate hearing where they give each party an opportunity to give their point of view about the different way of giving evidence. The Judge may call for a report from any person considered to be qualified to advise them on the effect on you of giving evidence in the ordinary way.²⁰

When deciding if you can give evidence in a special way the Judge is required to balance the need to minimise the stress on you with the need to ensure fairness in the proceedings.

¹⁹ You can read more about the types of Family Court conferences and hearings by visiting the Ministry of Justice website <https://www.justice.govt.nz/family/care-of-children/resolving-parentings-disagreements/going-to-family-court-after-mediation/after-you-apply-for-an-order/>

²⁰ Sections 103 and 104 of the Evidence Act 2006 apply.



Cross examination

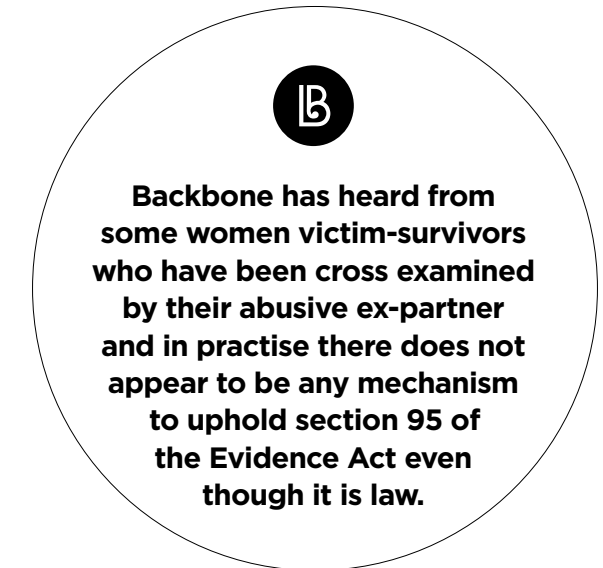
Cross examination is a process in which witnesses are asked questions during the hearing. There are rules governing cross examination in the Family Court when family or sexual violence is part of a case. The person who abused you or your children is not entitled to personally cross examine you.²¹

The rules apply to any proceeding where family or sexual violence is alleged, including Care of Children Act etc. and not only Family Violence Act proceedings (e.g. Protection Orders).

- The person who abused you is not allowed to personally cross examine you.
- If you are unrepresented then you may not have to cross examine the person who abused you.
- If the Judge appoints someone to cross examine you because the abuser is self-representing their job is only to relay the other party's questions to you and not to act as their stand in legal counsel.

The Judge may order that another person is appointed by the court to undertake the cross examination of you. This person is called Counsel to Assist. Their role is to ask you the questions prepared by the other party. They cannot ask their own questions of you and they are not allowed to provide legal advice or represent the other party.

If you are concerned that your abuser does not have a lawyer, and the court has not appointed a Counsel to Assist, there are some options for ensuring that section 95(1) is upheld. You can ask your lawyer to raise this at the Directions Conference or the Hearing. Alternatively, you (if you are not represented), or your lawyer, could write a memorandum that outlines your request for Counsel to Assist to be appointed, and



the reasons why you are asking. You need to send the memorandum to the court and the other party via their lawyer, or to them directly if they are not represented.

If you don't have a lawyer you may have to cross examine your abuser (put your questions to them while they are in the witness stand). It may be possible for a Judge to appoint a Counsel to Assist for you who can then put your questions

²¹ Section 95 of the Evidence Act sets out that a judge can order that the abuser must not personally cross-examine you based on a number of grounds including the nature of the relationship between the two parties. You can read the legislation here: <https://www.legislation.govt.nz/act/public/2006/0069/latest/DLM393926.html>.

to the other party. However, there is no standard approach as to whether or not an unrepresented victim-survivor will have a Counsel to Assist appointed. If you feel you need a Counsel to Assist throughout the cross examination you could apply to the court using a memorandum as explained above. You can also ask the Judge if you can ask your questions to the Judge and that they ask the other party. The Judge has discretion as to whether or not they agree to this.

Unacceptable questions

A Judge must disallow, or direct that a witness is not obliged to answer, any question that the Judge considers improper, unfair, misleading, needlessly repetitive, or expressed in language that is too complicated for the witness to understand.²²

If you have a lawyer they can ask the Judge directly to rule on whether the question or line of questioning is acceptable. If you are unrepresented and want a Judge to disallow a question you can ask the Judge directly and you will need to refer to one of the concerns listed above and refer to section 85 of the Evidence Act.

A Judge can take many things into account when deciding which questions are unacceptable, but some of the main factors include:

- a)** the age or maturity of the witness; and
- b)** any physical, intellectual, psychological, or psychiatric impairment of the witness
- c)** language or cultural background
- d)** religious beliefs of the witness
- e)** the nature of the proceeding
- f)** in the case of a hypothetical question, whether the hypothesis can be proved by other evidence in the proceeding.

²² These rules are in Section 85 of the Evidence Act and can be read here: <https://www.legislation.govt.nz/act/public/2006/0069/latest/DLM393916.html>

Managing distress and trauma responses

Sometimes victim-survivors become very upset or overwhelmed during the cross examination. If you get very distressed the Judge may intervene, usually to take a break or slow down the questioning process.

You, or your lawyer can ask the Judge to:

- consider the question unacceptable and disallow it
- take a break to give you some time out
- have the abuser's lawyer's questions asked through the Judge
- allow a different way to give evidence
- consider not allowing any more questioning on the current topic.

It could help, well ahead of the hearing, to discuss with your lawyer any worries you have about becoming distressed or experiencing trauma responses. Understanding your concerns early can help your lawyer plan for having other possible ways for you to give evidence if need be. Your lawyer may not have a good understanding of trauma responses and may not understand why you are distressed. Explain to your lawyer what the signs of your trauma response or PTSD are that they should watch out for so they are prepared to ask a Judge to intervene if need be.

You might also want to think about some strategies that you could use during the cross examination to help you manage any distress and/or trauma responses. Some victim-survivors have suggested things that can help.



It is entirely up to the individual Judge whether they agree to any of the options listed in this section. There is no legal requirement for a Judge to intervene if a witness gets distressed or impacted by trauma responses.

Managing distress and trauma responses

- Take a slow deep belly breath.
- Do something to help ground you in the present such as wiggling your toes to feel the floor, wriggling your fingers or shaking out your hands, look around you and notice objects around you and/or take a sip of water.
- Take a small object with you to court like a squeeze ball, a crystal or a piece of jewellery that you can hold in your pocket.
- Choose a relaxing or special image or quote/affirmation ahead of your hearing that you can look at/think about if you feel distressed.
- Try and slow down your thinking and ask for the question to be repeated if need be.
- Ask the Judge for a break or moment to calm down.
- Rescue remedy.

Interpreters

Court is conducted in English or Māori. You have the right to speak te reo Māori or use New Zealand Sign Language in court.²³

You are entitled to an interpreter (communication assistance) to help you give evidence. However, the Judge can decline your application for an interpreter if they think you can understand the questions being asked and respond to them.²⁴

If you think you will have difficulty giving your evidence or understanding the questions being asked of you, it might be helpful for you to speak with a specialist family and/or sexual violence advocate who can help you with information about the use of interpreters at the Family Court. You can get in touch with advocates who speak a range of languages by contacting either of the organisations listed to the right.

The Ministry of Justice can provide and pay for interpreters to help you participate in

Shakti
24/7 multi lingual crisisline
0800SHAKTI (0800742584)
<https://www.shakti-international.org/shakti-nz/contact-us-nz/>

or

Shama
Centre phone: (07) 843 3810
<https://shama.org.nz/>

your Family Court hearing if required. The court needs at least 10 days' notice that you will need an interpreter.

If you would like an interpreter to attend your Family Court proceeding you can submit a request to your Family Court case manager. There is a special form that you

need to complete which you can access via the link below. If you would like a female interpreter you can state that in the "Any additional information" section at the bottom of the form.

You need to email or post the completed application form to your Family Court case manager as soon as possible before your scheduled hearing to ensure enough time to get an interpreter for you.

<https://www.justice.govt.nz/assets/Request-for-an-interpreter.pdf>

If you would like some support with your application for an interpreter you can call the Family Court call centre on **0800 224 733** between 8:30am and 5:00pm Monday to Friday. The call taker can guide you through the application process and send an email to your case manager on your behalf to note that you need an interpreter.

²³ To find out more about what you need to do if you want to speak te reo Māori or use New Zealand sign language in court visit Ministry of Justice website <https://www.justice.govt.nz/courts/going-to-court/pre/interpreters-language-and-disability-access/>

²⁴ Please see section 80 and 81 of the Evidence Act for more information. <https://www.legislation.govt.nz/act/public/2006/0069/latest/whole.html#DLM393906>

Accessibility

If you have specific support needs to enable you to attend and participate in the Family Court hearing, assistance may be available at your local Family Court.

There are a range of ways the court may be able to support you. You can visit the Ministry of Justice website²⁵ to find out more about:

- getting documents in other formats
- accessibility in court rooms
- if you have a hearing problem, options for seating, sound reinforcement, quiet spaces and having someone to sign for you
- support to go through documents if you have an intellectual disability or a problem with attention, memory or decision-making
- communication assistance to help you give evidence.

You'll need to tell the court what supports you will need at least 5 working days before your court date.

Some courts are equipped to support people with hearing disabilities, some have ramps and moveable seating. However, court facilities vary throughout the country so it is best to contact your Family Court case manager or your local court to find out more about the options available.

To contact your local Family Court, you can use the link below.

<https://www.justice.govt.nz/contact-us/find-us/>

When using the search function on this page you will first need to enter the type of court – so click on that space and enter 'Family' from the drop-down options listed. You also need to select the location of the court you want to know about and then push 'search'.

The page will open with information about the Family Court in that area including phone numbers, email addresses and if wheelchair access is available and where in the building this is situated.

Some of the email addresses listed are generic court email addresses and are not specific to the Family Court team at your local courthouse. You can use these email addresses to ask about court accessibility supports. The emails will be passed on to the Family Court team who should reply to you.

²⁵ <https://www.justice.govt.nz/courts/going-to-court/pre/interpreters-language-and-disability-access/>



www.backbone.org.nz

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