Child Custody Laws and Independent Children's Lawyers

Date : August 20, 2019

An independent children's lawyer, also known as an ICL, is a Court-appointed lawyer who acts independently to represent the child's interests in family law proceedings regarding child custody laws. The child, an organization concerned with the welfare of the child or any other person may apply for an ICL to be appointed. The Court may then make an order to appoint an ICL who will attempt to find out what the views of the child are.

The Full Court in *Re K* [1994] FamCA 21 provided some guidance on what the court might consider when appointing an ICL in matters involving child custody laws, including:

- Alleged child abuse
- Unsuitability of either parent
- Parental conflict
- Proposal to relocate the child far away
- Alienation from a parent
- A parent's sexual preferences
- Special medical procedure for the child

Role of the ICL

The role of the ICL is not to take instructions from the child, but rather, to represent the child's best interests. The ICL should form an independent view of what is in the child's best interests according to the evidence, act in the child's best interests and make submissions to the Court regarding the child's best interests. The child's best interests must be distinguished, however, from the child's wishes. An ICL is not obliged to follow the child's wishes and may disclose information about the child against their wishes if necessary.

Procedure of the ICL

Once the Court had made an order for the appointment of an ICL, the ICL will file and serve an Address for Service to advise the Court and the parties of their appointment. The ICL will then meet the child if they are of school age. They may liaise with the Family Consultant if there is one or any other expert that has been appointment to provide a Court report. After the hearing, the ICL has a right to appeal orders regarding child custody laws made on behalf of the child.

For advice about Child Custody Laws contact us on 1800 300 170 or email us at familylaw@matthewsfolbigg.com.au

Disclaimer

Family law situations can be complex and sometimes they can involve serious issues. Information outlined is proposed to provide general guidance only. Due to the seriousness of legal matters as well as the uniqueness of your individual situation, professional advice should be sought. For advice, please contact one of our Family Lawyers.