



## **PRACTICE DIRECTION No. 15/2014**

**(GCR O.1, r.12)**

### **INHERENT JURISDICTION (INCLUDING WARDSHIP) PROCEEDINGS**

#### **1. The Nature of Inherent Jurisdiction Proceedings**

- 1.1 It is the duty of the court under its inherent jurisdiction to ensure that a child who is the subject of proceedings is protected and properly taken care of. The court may in exercising its inherent jurisdiction make any order or determine any issue in respect of a child unless limited by case law or statute. Such proceedings should not be commenced unless it is clear that the issues concerning the child cannot be resolved under the Children Law (2012 Revision).
- 1.2 The court may under its inherent jurisdiction, in addition to all of the orders which can be made in family proceedings, make a wide range of injunctions for the child's protection of which the following are the most common –
  - (a) orders to restrain publicity;
  - (b) orders to prevent an undesirable association;
  - (c) orders relating to medical treatment;
  - (d) orders to protect abducted children, or children where the case has another substantial foreign element; and
  - (e) orders for the return of children to and from another state.
- 1.3 The court's wardship jurisdiction is part of and not separate from the court's inherent jurisdiction. The distinguishing characteristics of wardship are that –
  - (a) custody of a child who is a ward is vested in the court; and
  - (b) although day to day care and control of the ward is given to an individual or to the Department of Children and Family Services, no important step can be taken in the child's life without the court's consent.

## **2. Parties**

- 2.1 Where the child has formed or is seeking to form an association, considered to be undesirable, with another person, that other person should not be made a party to the application. Such a person may be made a respondent only to an application within the proceedings for an injunction or committal. Such a person should not be added to the title of the proceedings nor allowed to see any documents other than those relating directly to the proceedings for the injunction or committal. He or she should be allowed time to obtain representation and any injunction should in the first instance extend over a few days only.

## **3. Removal from jurisdiction**

- 3.1 A child who is a ward of court may not be removed from the Cayman Islands without the court's permission. Practice Direction No. 16 of 2014 (International Child Abduction) deals in detail with locating and protecting children at risk of unlawful removal.
- 3.2 Where care and control has been given to the Department of Children and Family Services, or to an individual, it is permissible for the court to give general leave to make arrangements to remove the ward for temporary visits abroad in suitable cases, thereby obviating the need to make application for leave, each time it is desired to remove the ward from the jurisdiction. General leave is conditional upon the party obtaining the order lodging at the registry of the Family Division at least seven days before each proposed departure:
- (a) a written consent in unqualified terms by the other party or parties to the ward's leaving the Cayman Islands for the period proposed;
  - (b) a statement in writing, giving the date on which it is proposed that the ward shall leave the Cayman Islands, the period of absence and the whereabouts of the ward during such absence; and, unless otherwise directed, a written undertaking by the applicant to return the ward to the Cayman islands at the end of the proposed period of absence.

On compliance with these requirements a certificate, for production to the Department of Immigration, stating that the conditions of the order have been complied with, may be obtained from the Registry.

## **4. Interviewing the Ward for the Proceedings**

- 4.1 A ward may be seen by a welfare officer appointed by the court for the purposes of preparation of a welfare report, or by his Guardian Ad Litem for instructions to an attorney for the purposes of presenting his case. In those circumstances leave is not required. For an independent reporter (being a person appointed by a party to report to the court) seeking to interview a ward of court, leave of the court must be obtained.

## **5. Criminal Proceedings**

- 5.1 Where a child has been interviewed by the police in connection with contemplated criminal proceedings and the child subsequently becomes a ward of court, the permission of the court deciding the wardship proceedings ("the wardship court") is not required for the child to be called as a witness in the criminal proceedings; provided any necessary leave of the trial court is obtained.
- 5.2 Where the police need to interview a child who is already a ward of court, an application must, other than in the exceptional cases referred to in paragraph 5.5, be made to the wardship court for permission for the police to do so. Where permission is given the order should, unless there is some special reason to the contrary, give permission for any number of interviews which may be required by the prosecution or the police. If a need arises to conduct any interview beyond the permission contained in the order, a further application must be made.
- 5.3 The above applications must be made with notice to all parties.
- 5.4 Where a person may become the subject of a criminal investigation and it is considered necessary for the child who is a ward of court to be interviewed without that person knowing that the police are making inquiries, the application for permission to interview the child may be made without notice to that party. Notice should, however, where practicable be given to the child's guardian.
- 5.5 There will be other occasions where the police need to deal with complaints, or alleged offences, concerning children who are wards of court where it is appropriate, if not essential, for action to be taken straight away without the prior permission of the wardship court, for example –
- (a) serious offences against the child such as rape, where a medical examination and the collection of forensic evidence ought to be carried out promptly;
  - (b) where the child is suspected by the police of having committed a criminal act and the police wish to interview the child in respect of that matter;
  - (c) where the police wish to interview the child as a potential witness.
- 5.6 In such instances, the police should notify the parent or foster parent with whom the child is living or another 'appropriate adult'<sup>1</sup> so that that adult has the opportunity of

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<sup>1</sup> 'appropriate adult' means (i) the parent, guardian or, if the juvenile is in the care of a local authority or voluntary organisation, a person representing that authority or organisation; (ii) a social worker of a local authority; (iii) failing these, some other responsible adult aged 18 or over who is not a police officer.

A person, including a parent or guardian, should not be an appropriate adult if they are: (i) suspected of involvement in the offence; (ii) the victim; (iii) a witness; or (iv) involved in the investigation

being present when the police interview the child. Additionally, if practicable the child's guardian (if one has been appointed) should be notified and invited to attend the police interview or to nominate a third party to attend on the guardian's behalf. A record of the interview or a copy of any statement made by the child should be supplied to the child's guardian. Where the child has been interviewed without the guardian's knowledge, the guardian should be informed at the earliest opportunity of this fact and (if it be the case) that the police wish to conduct further interviews. The wardship court should be informed of the situation at the earliest possible opportunity thereafter by the child's guardian, parent, foster parent (through the local authority) or other responsible adult.

## **6. Wards of Court: Disclosure of Evidence**

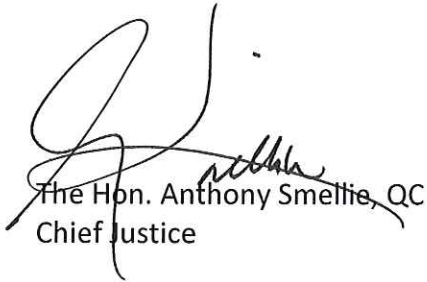
- 6.1 In wardship cases, leave must be required to disclose evidential documents to persons who are not parties, e.g. psychiatrist, psychologist and medical experts or any other person. Disclosure without prior leave may be a contempt of court, and this is nonetheless the case where the purpose of the disclosure is only to obtain advice from the expert concerned as to whether the relevant expert evidence would be forthcoming or would be helpful to the court.

## **7. Wards of Court: Psychiatric, Psychological or Medical Examination**

- 7.1 It is a firmly established principle in wardship cases that the ward should not be subjected to psychiatric or psychological examination without leave of the court.
- 7.2 An order for leave should normally be made only if the minor is separately represented and his representative supports the application or if the application is supported by the Department of Children and Family Services if they have the care or supervision of the ward.
- 7.3 An order for leave should not normally be made unless there is or is suspected to be a specific and identifiable problem or potential problem on which the court needs assistance, which can only, or most conveniently be provided by a qualified psychiatrist or psychologist.
- 7.4 Where the court has given such leave, the costs of the examination and report will normally be allowed on taxation, either inter parties or out of the legal aid fund, as appropriate, subject to the taxing officer's discretion as to the amount.
- 7.5 Where no such leave has been obtained, the court may refuse to admit the report in evidence and may direct that the costs of obtaining any examination and report should be disallowed.

- 7.6 If the necessary parental consent is given there is no need to apply for leave to subject a ward to an examination which is purely physical (i.e. when neither psychiatric nor psychological examination is involved). The termination of a pregnancy (for the protection of the life of the ward in keeping with section 141 of the Penal Code (2013 Revision), and other form of surgery or invasive procedure or the taking of a blood or other bodily sample from the ward will require leave.

DATED this 30th day of May 2014



The Hon. Anthony Smellie, QC  
Chief Justice