|  |  |  |
| --- | --- | --- |
| **Child Support Act 1991** Reprinted at 20 August 2012 | **Changes proposed in the Bill** | **Comments/Suggestions** |
|  | **Part 5 Amendments to other Acts**Subpart 1—Amendments to Child Support Act 1991 |  |
|  | **72 Principal Act****This subpart** amends the Child Support Act 1991 (the **principal Act**). |  |
| **226 Appointment of barrister or solicitor to assist court or represent children**(1) In any proceeding under this Act (not being criminal proceedings) a court may, if the court is satisfied that it is necessary or desirable to do so, appoint a barrister or solicitor—(a) to assist the court; or(b) to represent any child who is the subject of or who is otherwise a party to the proceeding.(2) A barrister or solicitor appointed under this section may call any person as a witness in the proceeding, and may cross-examine witnesses called by any party to the proceeding or by the court. | **73 Section 226 replaced (Appointment of barrister or solicitor to assist court or represent children)**Replace section 226 with:“**226 Appointment of lawyer to represent child in proceedings**“(1) In any proceedings under this Act (other than criminal proceedings), a court may appoint a lawyer to represent any child who is—“(a) the subject of the proceedings; or“(b) a party to the proceedings.“(2) An appointment under **subsection (1)** may be made only if the court is satisfied that the appointment is necessary or desirable.“**226A Appointment of lawyer to assist court**In any proceedings under this Act (other than criminal proceedings), a court may—“(a) appoint a lawyer to assist the court; or“(b) direct the Registrar of the court to appoint a lawyer to assist the court. | **Comments**: limits court’s powers to appoint counsel for child or to assist court to only if the court is satisfied it is necessary or desirable rather than may if satisfied/necessary. More restrictive wording that limits the latitude of the court to make such decisions?Also removes that counsel’s rights to call or cross examine witnesses, which again was not raised in the original FC Review Discussion Document.**Suggestions**: do not approve |
| **226 cont’d**(3) The fees and expenses of any barrister or solicitor appointed under this section shall, in accordance with regulations made under this Act, be paid out of a Crown Bank Account from money appropriated by Parliament for the purpose.(4) The bill of costs rendered by a barrister or solicitor appointed under this section shall be given to the Registrar of the court in which the proceeding was heard and the Registrar may tax the bill of costs.(5) If the barrister or solicitor is dissatisfied with the decision of the Registrar as to the amount of the bill of costs, that person may within 14 days after the date of the decision apply to a Family Court Judge to review the decision; and the Judge may thereupon make such order varying or confirming the decision as the Judge considers fair and reasonable.(6) Notwithstanding subsection (3), the court may, if it thinks proper, order any party to the proceeding to refund to the Crown such amount as the court specifies in respect of any fees and expenses paid under that subsection, and the amount ordered to be refunded shall be a debt due to the Crown by that party and shall then be enforceable in the same manner as a judgment given by the District Court in any civil proceeding.Compare: 1980 No 94 [s 162](http://www.legislation.govt.nz/act/public/1991/0142/latest/link.aspx?id=DLM41840)Section 227(3): amended, on 25 January 2005, pursuant to [section 65R(3)](http://www.legislation.govt.nz/act/public/1991/0142/latest/link.aspx?id=DLM162942) of the Public Finance Act 1989 (1989 No 44). | “**226B Fees and expenses of lawyer appointed under section 226 or 226A**“(1) The fees and expenses of a lawyer appointed under **section 226 or 226A** must—“(a) be determined in accordance with regulations made under **section 16D** of the **Family Disputes (Resolution Methods) Act 1980**; and“(b) be paid out of public money appropriated by Parliament for the purpose.“(2) The bill of costs rendered by a lawyer appointed under **section 226 or 226A** must be given to the Registrar of the court in which the proceedings were heard, and the Registrar may tax the bill of costs.“(3) A lawyer who is dissatisfied with the decision of the Registrar as to the amount of the bill of costs may, within 14 days after the date of the decision, apply to a Family Court Judge to review the decision; and the Judge may on the application make any order varying or confirming the decision that the Judge considers fair and reasonable.“(4) Despite **subsection (1)**, the court may, if it thinks proper, order a party to the proceedings to refund to the Crown an amount the court specifies in respect of any fees and expenses paid under **subsection (1)**, and the amount ordered to be refunded is a debt due to the Crown by that party and, in default of payment of the amount, payment of it may be enforced, by order of a District Court or the High Court as the case may require, in the same manner as a judgment of that court.” | **Comment**: New Family Disputes Resolution Methods Act contains provisions for setting and paying legal fees. According to Bill documentation these changes simply amend this act to reflect that change. |
| **235 Regulations**(1) The Governor-General may from time to time, by Order in Council, make regulations, not inconsistent with this Act, for all or any of the following purposes:…(d) prescribing the fees and expenses payable to any barrister or solicitor appointed under [section 226](http://www.legislation.govt.nz/act/public/1991/0142/latest/link.aspx?id=DLM257338): | **74 Section 235 amended (Regulations)**Repeal section 235(1)(d). | **Comment:** ditto |